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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 802 (GBD)

5 MENDEL ZILBERBERG,

6 Trial

7 Defendant.

-----x

8 New York, N.Y.  
9 July 5, 2023  
10 10:00 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge  
14 -and a Jury-

15 APPEARANCES

16 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

17 DINA McLEOD

DANIEL G. NESSIM

18 Assistant United States Attorneys

19 BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant

20 BY: BENJAMIN BRAFMAN

JACOB KAPLAN

21 Also Present:

22 Robert Stout, Special Agent FBI

23 Nicholas Tranchitella, Special Agent FDIC

Joseph Carbone, Paralegal Specialist, USAO

24 Lia Newman, Paralegal Specialist, Brafman & Associates, P.C.

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(Case called)

MS. McLEOD: Good morning, your Honor. Dina McLeod and Daniel Nessim for the government, and with us at counsel table is Special Agent Robert Stout of the FBI.

THE COURT: Good morning.

MR. BRAFMAN: Good morning, your Honor. Benjamin Brafman, Jacob Kaplan, and Lia Newman, who is a paralegal with our office. And seated here is Mr. Mendel Zilberberg, the defendant in this case.

THE COURT: Good morning.

Is the government ready to proceed?

MS. McLEOD: Yes, your Honor.

THE COURT: Mr. Brafman, defense ready to proceed?

MR. BRAFMAN: Yes, your Honor.

THE COURT: Are there any issues that we need to address before we bring up the jury?

MR. BRAFMAN: I don't believe so, your Honor.

MS. McLEOD: No, your Honor.

THE COURT: All right. Let me make sure I know — I have a correct list of all of the folks who are at the table. I have Mr. Brafman, Mr. Kaplan, and Ms. Newman.

MR. BRAFMAN: That's correct, sir.

THE COURT: And at the government's table, I have Ms. McLeod and Mr. Nessim and Nicholas — how do you pronounce —

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1 MS. McLEOD: Nicholas Tranchitella.

2 THE COURT: — Tranchitella?

3 MS. McLEOD: Tranchitella.

4 THE COURT: That's who?

5 MS. McLEOD: He is right there.

6 THE COURT: Is he going to be at counsel table?

7 MS. McLEOD: He may be. He's one of the case agents.

8 THE COURT: All right. Who else do we have at counsel  
9 table?

10 MS. McLEOD: We also have our paralegal Joseph  
11 Carbone.

12 THE COURT: All right. Am I missing somebody?

13 MS. McLEOD: I think that's everybody who might be at  
14 the government's table.

15 THE COURT: Who's Carbone? OK.

16 MR. STOUT: Special Agent Robert Stout.

17 THE COURT: I don't think I have you. OK. That's  
18 what I was missing. Robert Stout, S-t-o- —

19 A VOICE: U-t.

20 THE COURT: U-t.

21 Now, at this point approximately how many witnesses  
22 does the government have and how long do you think it will take  
23 to present those witnesses?

24 MS. McLEOD: The government has eight witnesses. I  
25 think it's possible that the government could rest Monday or

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1 Tuesday.

2 THE COURT: Of next week?

3 MS. McLEOD: Of next week, yes.

4 THE COURT: So you think you can put in your case in a  
5 week?

6 MS. McLEOD: Yes.

7 THE COURT: And I have a witness list. I have eight  
8 names on that witness list. Are those the people, or do we  
9 have additional people or substitutes?

10 MS. McLEOD: Those should be the list, yes.

11 THE COURT: Mr. Brafman, obviously, other than  
12 discussing with your client whether he's going to testify, do  
13 you anticipate at this point calling additional witnesses?

14 MR. BRAFMAN: No, I don't, your Honor. We've managed  
15 to stipulate to a lot of things, so we're OK.

16 THE COURT: All right. So we should be able to get  
17 the witnesses in before the end of next week.

18 MR. BRAFMAN: Yes.

19 THE COURT: Today being Wednesday.

20 So I think that I was told that the jury would be  
21 ready in about ten minutes. So we can — as soon as they're  
22 ready, we can bring them up, and we can start.

23 (Jury selection commenced)

24 (Continued next page)

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AFTERNOON SESSION

2:35 p.m.

(In open court; jury not present)

THE COURT: I think all our jurors are here. We're ready to begin. I'll bring them in.

(Jury present)

THE COURT: OK. You can be seated.

Could we swear in the jurors.

(A jury of 12 and 2 alternates was impaneled and sworn)

THE COURT: Members of the jury, at this point I'm required by the law to instruct you generally concerning your basic functions, duties, and certain rules which apply to every jury so that you will better be able to assess and weigh the evidence as it's presented and reach a proper verdict.

Now, the trial has commenced with the selection of the jury. The next step in the trial will be an opening statement by the government to outline for you what the prosecution intends to prove by way of evidence in the case.

Now, after counsel for the government makes their opening statement, counsel for the defendant, if they desire, may also, but are not required to, make an opening statement.

Now, what counsel for either side says in an opening statement is not evidence. You may consider the opening statement as a preview of what each side intends to prove by

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1 way of evidence in the case.

2 Now, after the opening statement, or statements, the  
3 Assistant United States Attorneys will present one or more  
4 witnesses who will be questioned by them. Now, this is called  
5 direct examination. And after the Assistant U.S. Attorney  
6 completes their questioning of the witness, defense counsel  
7 will be given an opportunity to question that witness. This is  
8 called cross-examination. And after the government has  
9 concluded the calling of its witnesses and the introduction of  
10 any exhibits which are admissible into evidence, the defendant  
11 may, but is not required to, offer evidence in his own defense.  
12 And after both sides rest, the government's attorney may make a  
13 closing argument, followed by the closing argument of the  
14 defendant's attorneys, and the government attorney will then  
15 make a rebuttal in response, and then I will instruct you on  
16 the law, and you will retire to deliberate for the purpose of  
17 reaching a verdict.

18 Now, this is a general outline of the trial procedure.  
19 Now, I'm hopeful again, now that I've spoken to the lawyers,  
20 hopefully we'll be done with the witnesses in a week or so, a  
21 little less time than I thought, if we move efficiently. And  
22 I'm going to ask that you listen carefully to the testimony.  
23 You can take notes if you want, but you don't have to. If you  
24 want any testimony read back to you, the court reporter is  
25 taking down every word that's being said and can read the

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1 testimony back to you of any witness word for word.

2 Now, the evidence in this case consists of testimony  
3 of witnesses under oath and exhibits which are admitted into  
4 evidence plus any stipulations agreed upon by the attorneys.

5 Now, questions in and of themselves are not evidence.  
6 Therefore, you cannot infer any fact from the mere asking of a  
7 question. It is the answer coupled with the question that  
8 constitutes evidence. For example, if a witness was asked a  
9 question, "Don't you own an automobile?" and the witness  
10 answers "No," you may not infer from the mere asking of the  
11 question that the witness does own an automobile.

12 Now, during the course of the trial, the Assistant  
13 United States Attorney or defense counsel may object to a  
14 question or an answer on the ground that it somehow is legally  
15 improper or inadmissible. Now, if I sustain the objection,  
16 this means that the question or the answer was in some way  
17 improper, and if an answer's already been given, I will  
18 instruct you to disregard it. Therefore, the answer is no  
19 longer evidence in the case. If I overrule the objection, then  
20 it means that the question is proper, and I will permit it to  
21 be answered or, if already answered, I will permit the answer  
22 to remain as evidence in the case.

23 Now, please do not resent the fact that an attorney  
24 makes objections. This is their duty. And do not hold it  
25 against them, against either side, if I rule against them.

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1 Now, as I will explain in detail in my instructions at the end  
2 of the case, as jurors in this case, you are the sole judges of  
3 the facts, and I am the sole judge of the law, and you must  
4 accept the law as I give it to you without hesitation or  
5 reservation, even if you privately disagree with me. Now, you  
6 must keep an open mind throughout the trial. You must not  
7 converse amongst yourselves or with anyone else upon any  
8 subject connected with the trial.

9           You must neither offer nor express an opinion about  
10 the guilt or innocence of the defendant or reach any conclusion  
11 about what the verdict should be until I finally give the case  
12 to you. You must not read or listen to any accounts or any  
13 discussions of the case in the event that it's reported by  
14 newspapers or other news media, and you must not visit or view  
15 any premises or place where the offense charged was allegedly  
16 committed or any other place or premises involved in the case.  
17 And you must not do any research or investigation about the  
18 case on your own.

19           You must decide this case solely on the evidence  
20 presented at this trial, and you must speak to no one about the  
21 case until the trial has completely ended. And you must  
22 promptly report to the Court any incident within your knowledge  
23 involving an attempt by any person to speak with any member of  
24 the jury about the case.

25           Now, during the trial, again, you should not speak



1 with any of the parties in this case nor any individuals  
2 associated with them. As I instructed you, they are instructed  
3 not to speak with you. So don't consider it rude if they see  
4 you outside of this courtroom and they don't acknowledge your  
5 presence. Obviously, if someone were to see you speaking to  
6 one of the parties involved in the case, they might draw an  
7 improper inference even though it may be a perfectly innocent  
8 conversation unrelated to the case.

9 Now, we're right on schedule, and I want to move right  
10 along. So we'll next start — proceed with the next step in  
11 the trial, which would be an opening statement by the  
12 government.

13 MS. McLEOD: This is a case about greed and lies. The  
14 greed of this man, the defendant, Mendel Zilberberg, and the  
15 lies that he and his partners in crime told to trick a bank  
16 into giving them a loan for \$1.4 million.

17 Mendel Zilberberg is a lawyer, and in 2009 he was also  
18 on the board of directors at a bank here in New York City. A  
19 director at a bank is supposed to look out for the interests of  
20 the bank first. He's supposed to put what is good for the bank  
21 over what is good for him. But the defendant did the opposite.  
22 He and his coconspirators partnered up to get a \$1.4 million  
23 loan using a sham borrower, someone who applies for a loan and  
24 claims to be the person seeking the loan but in reality is just  
25 a front man for the real borrower. The defendant and his

1 partners in crime were the real borrowers, and they lied to the  
2 bank about that and a lot of other things to make sure that  
3 they got their money.

4 The defendant used his position at the bank as a  
5 director of the bank to get the loan processed and approved.  
6 And when the \$1.4 million was issued by the bank, the defendant  
7 took his cut, over \$450,000, a third of the loan money, and he  
8 never paid it back. That's why we're here today, because when  
9 the defendant defrauded his own bank to get a \$1.4 million  
10 loan, he committed multiple federal crimes.

11 Ladies and gentlemen, this is the government's opening  
12 statement. This is an opportunity to give you an overview of  
13 what the evidence will show and how we will prove it to you.

14 So what will the evidence show? The evidence is going  
15 to show that the defendant, along with his coconspirators, lied  
16 to a bank in order to get a loan for \$1.4 million that the  
17 defendant never repaid.

18 About 15 years ago, in 2009, the defendant was a  
19 practicing attorney. He was also a director on the board of a  
20 bank called Park Avenue Bank, and the defendant had a client  
21 who was trying to get a business off the ground. His client  
22 needed investors. He needed money to get his business going,  
23 but the defendant's client didn't have good enough credit to  
24 get a loan for the business. So the defendant's client brought  
25 a potential investor on board, but that investor needed a loan

1 to make his investment, and the investor also had bad credit.

2 So we have three people: The defendant, the  
3 defendant's client, and the potential investor. They all want  
4 money, but they can't get it through a legitimate loan. So to  
5 solve their problem, they all agree to use a sham borrower, one  
6 of the investor's friends, to apply for a loan from the bank.  
7 The investor would get the money to make his investment,  
8 defendant's client would get the money he needed for his  
9 business, but there was one catch. The defendant wanted them  
10 to apply for an even bigger loan than originally planned  
11 because the defendant wanted to take a cut of the money for  
12 himself. The defendant and his coconspirators agreed that the  
13 defendant would get one-third of the money, and in return, the  
14 defendant would help get the loan processed and approved. And  
15 the defendant held up his end of the bargain. He used what he  
16 knew as a director of the bank and his position at the bank to  
17 get the loan approved.

18 First, the defendant and his coconspirators told the  
19 bank a series of lies. The identity of the borrower was a lie.  
20 The defendant also told the bank that the purpose of the loan  
21 was for the sham borrower to take advantage of business  
22 opportunities. That was also a lie. The loan application  
23 stated that the sham borrower was a client of the defendant's.  
24 Also a lie. And the defendant never told the bank that he was  
25 actually getting a big cut of the loan. And you will hear that

1 these lies mattered to the bank because when a bank is trying  
2 to decide whether to give someone a loan, the bank is looking  
3 at whether that person will pay the loan back. So it's crucial  
4 for the bank to know the true borrower on the loan. But the  
5 defendant and his coconspirators lied about that exact fact to  
6 the bank because they knew they couldn't get the money fair and  
7 square.

8 And make no mistake, the defendant planned this fraud  
9 carefully. He made sure that this loan would be pushed through  
10 with as little scrutiny as possible. He used a sham borrower  
11 to apply for the loan, concealing his own stake in the loan,  
12 because he knew that a bank regulation required that a bank  
13 insider like himself had to get the approval of the full board  
14 of directors when seeking a loan.

15 And what about the amount of the loan, \$1.4 million?  
16 The defendant chose that number purposely. He knew that a loan  
17 of over \$1.5 million would need to go to the bank's credit  
18 committee and would be looked at more closely. And the  
19 defendant's preparation and lies worked. The bank approved the  
20 loan, and the money was deposited into the sham borrower's bank  
21 account, and then the coconspirators started moving the money  
22 out into bank accounts that they controlled.

23 And who was the very first person who got a cut of the  
24 money? The defendant. On the very same day that the loan was  
25 funded by the bank, the defendant received over \$450,000 of the

1 loan money. And when the loan defaulted, the defendant was  
2 nowhere to be found. He never repaid the money that he took  
3 from the loan, and the bank, which the defendant knew was in  
4 bad financial shape, was left holding the bag.

5 So that's what the evidence is going to show. How  
6 will we prove it to you? What types of evidence are you going  
7 to see at this trial? First, you'll see different types of  
8 documents. You will see the loan presentation containing the  
9 lies about the loan. You will see emails between the defendant  
10 and the loan officer about the loan, emails where the defendant  
11 is repeatedly pushing the loan officer to get the loan  
12 approved. You will see bank records showing that, based on the  
13 lies that the defendant and his coconspirators told, the bank  
14 sent the sham borrower \$1.4 million and that hundreds of  
15 thousands of dollars of that money flowed to the defendant.

16 You'll also hear from witnesses. You'll hear from the  
17 sham borrower himself. He will tell you that he agreed to do a  
18 favor for the investor by helping him apply for this loan. He  
19 will tell you that he was just the borrower on paper. In  
20 reality, he didn't take any part of the loan money. The sham  
21 borrower will tell you that he did not fill out the loan  
22 paperwork and that the statements relied on by the bank in  
23 approving the loan were lies.

24 You will hear from the loan officer who reviewed the  
25 loan. He'll tell you about the bank's loan policy and what the

1 bank considered when evaluating whether to issue a loan. He  
2 will also tell you that he passed along the loan to his  
3 supervisors, but he did not recommend approving it because he  
4 thought it was a risky loan.

5 You are also going to hear from the investor who was  
6 one of the defendant's coconspirators. The investor will tell  
7 you specifically what they did to make the scheme work. He  
8 will tell you that they committed fraud and explain how and why  
9 they did it. And ladies and gentlemen, you'll hear that the  
10 investor has committed and pled guilty to serious crimes,  
11 including the crimes he committed with the defendant. And he  
12 entered into an agreement with the government to cooperate and  
13 testify about the crimes he committed in the hopes of receiving  
14 less jail time.

15 The sham borrower I told you about is testifying  
16 pursuant to what's called a non-prosecution agreement, which  
17 means that in exchange for the government not prosecuting him  
18 for his involvement in the defendant's crime, he has agreed to  
19 tell the government about what he did and to testify in court.

20 So listen carefully when the sham borrower and the  
21 investor testify and scrutinize what they tell you, and if you  
22 do, you will see that their testimony is consistent with the  
23 other evidence in this case — the emails, the bank records,  
24 and the other witnesses.

25 Ladies and gentlemen, the evidence you're going to see

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Opening - Mr. Brafman

1 and hear isn't necessarily going to come in in chronological  
2 order. The evidence will come in in bits and pieces, but after  
3 you've seen and heard all of the evidence in this case, you  
4 will know exactly what happened here. The defendant took  
5 advantage of his trusted position at a bank and worked with  
6 others to lie to get the bank to issue him a loan that he never  
7 should have gotten and which he never paid back.

8 Now, I'm about to sit down, but before I do, I'd ask  
9 you to do three things: First, pay close attention to the  
10 evidence; second, follow the judge's instructions on the law;  
11 and third, use your common sense, the same common sense that  
12 guides you in your daily lives. If you do those three things,  
13 the defendant will get a fair trial, the government will get a  
14 fair trial, and you will reach the only verdict that is  
15 consistent with the evidence and the law: The defendant is  
16 guilty.

17 THE COURT: Mr. Brafman, would you like to make an  
18 opening statement on behalf of the defense?

19 MR. BRAFMAN: Yes, your Honor.

20 Good afternoon, ladies and gentlemen. My name is  
21 Benjamin Brafman. This is Jacob Kaplan. We are going to  
22 defend Mr. Zilberberg. And this young lady is a paralegal at  
23 our firm, and this man is Mendel Zilberberg, who is on trial  
24 here.

25 I've listened carefully to the government's opening

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Opening - Mr. Brafman

1 statement, and I hope you did as well. There was one thing  
2 missing from her statement. She identified an investor, but  
3 she didn't mention his name. His name is Abraham Kahan. And I  
4 submit to you, with great respect, that the case relies on the  
5 credibility of Mr. Kahan. And when you hear his testimony, you  
6 will conclude that he is just not credible; that his testimony,  
7 I submit with great respect for your individual integrity, you  
8 will conclude that his testimony is essentially worthless.

9 So let me tell you what is not in dispute in this  
10 case. What is not in dispute, Mr. Zilberberg got money. They  
11 don't have to prove that. I'm conceding that he got money, but  
12 he got money out of the loan not through fraud. It was because  
13 he was a lawyer for one of the people who Ms. -- I only know  
14 her first name -- Ms. McLeod tells you was a coconspirator.  
15 That's not true.

16 And I want to tell you our opening statement because  
17 the voyage she took you through is not consistent with what  
18 happened in this case. Many of you have listened to coming  
19 attractions for a movie or reviews of a play, and then when you  
20 went to see it, it was nothing like the coming attractions.  
21 The coming attractions basically boil down little vignettes  
22 where they try to explain to you what the film's going to be  
23 about. And many times you come into the theater, you watch the  
24 whole movie, and you are disappointed. I think you're going to  
25 be very disappointed at the end of this trial.



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Opening - Mr. Brafman

1           So Mr. Zilberberg got money, and he was a lawyer. And  
2 one of the people in this case, Mr. Fried, who is not the  
3 investor, he was scrambling to get money for his business, a  
4 health care business. And Mr. Zilberberg had represented him  
5 through years of litigation, and he owed Mr. Zilberberg  
6 substantial legal fees. And Mr. Zilberberg got him the loan  
7 not by lying to the bank but by inquiring as to the status of  
8 the loan. And you will hear the bank person, Mr. Rosenwasser,  
9 and he will testify that it is not unusual for the person who  
10 refers the client or the loan applicant to the bank to make  
11 inquiry every so often as to when the loan will close.

12           And you will find that both Mr. Fried and Mr. Kahan  
13 were unscrupulous people, and Kahan took very real advantage of  
14 Mr. Sauber, who you will conclude he used as a dupe. And he  
15 took his wife, Toby, and had her sign the deed to her house to  
16 Mr. Sauber so that his financial statement to the bank would  
17 look like he was worth millions of dollars more, and that deed  
18 was transferred to Mr. Sauber for \$10. Obviously a sham  
19 transaction that Mr. Zilberberg had nothing whatsoever to do  
20 with and had no knowledge of whatsoever.

21           Indeed, when Mr. Kahan concocted this stupid scheme,  
22 they went to another bank first, and the loan was applied to a  
23 different bank, and the different bank refused the loan. And  
24 it was a different kind of a loan. It was a credit line. And  
25 Mr. Sauber went to that bank with Mr. Kahan, and that was

1 months before they came to the Park Avenue Bank. So you will  
2 find zero evidence that Mr. Zilberberg was aware of the sham  
3 transaction involving the home, and it was — he was unaware of  
4 the loan application where the government says Mr. Sauber was a  
5 straw borrower. Indeed, Mr. Kahan, who I will tell you a  
6 little bit more about in a minute, Mr. Kahan, who was meeting  
7 with the government agents again and again and again in an  
8 effort to gain a cooperation told them repeatedly that he never  
9 discussed the loan with Mr. Zilberberg. He never discussed the  
10 loan with Mr. Zilberberg. So they may tell you that the  
11 evidence in this case is going to allow you to conclude that  
12 Mr. Zilberberg was aware of the scheme. There is no evidence  
13 whatsoever to get you to conclude that Mr. Zilberberg was aware  
14 of it.

15           So there are some things which are not in dispute.  
16 This is not a case about whether a person was or was not a good  
17 director of a bank. This is not a civil lawsuit. This is a  
18 criminal case, and they are going to ask you to rely on flawed  
19 evidence and a flawed theory to get you to make a very  
20 important decision in your life, a very important decision,  
21 obviously, in the life of Mr. Zilberberg. And I submit to you  
22 that at the end of the case, you're going to conclude that they  
23 haven't provided you with credible evidence.

24           The only person who is going to testify about this  
25 scheme is Mr. Kahan, and he will admit on the witness stand

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Opening - Mr. Brafman

1 that he never discussed the sham transaction that he and his  
2 wife engaged in when they gave their house to Mr. Sauber. And  
3 Mr. Sauber will tell you that Mr. Kahan owed him money from  
4 before and that he promised Mr. Sauber, if you help me get this  
5 loan, I'm going to be able to pay you back for the \$70,000 that  
6 you gave me a long time ago.

7 So let me repeat — and sometimes repeating something  
8 makes an impression, I hope — that Mr. Sauber was picked by  
9 Mr. Kahan without Mr. Zilberberg's knowledge. That Mr. Sauber  
10 was picked by Mr. Kahan because Mr. Kahan had ripped him off in  
11 the past. He had convinced him to lend him money which he  
12 never paid back. So the actual borrower, according to the bank  
13 that appeared on the documents, was Mr. Kahan and Mr. Sauber  
14 because Mr. Kahan monitored these transactions very carefully  
15 to make sure that Sauber was at the bank and that Sauber was  
16 doing what he needed to do to fool the bank.

17 And the bank person who comes to testify,  
18 Mr. Rosenwasser, is not going to tell you that he approved the  
19 loan. He knew that Mendel Zilberberg was the person who was  
20 bringing this client to the bank. He believed that Mendel  
21 Zilberberg was the lawyer representing Mr. Sauber. So to  
22 suggest that they didn't know that he was a client of  
23 Mr. Zilberberg is inconsistent with the evidence that the  
24 government's own witnesses will tell you.

25 The fact that Mr. Zilberberg got money from the loan

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Opening - Mr. Brafman

1 does not mean he committed a bank fraud. The fact that  
2 Mr. Zilberberg got money from the loan does not mean that he  
3 was responsible for defrauding the bank. And when this case  
4 ends, I think you will conclude that the government has not  
5 proved their case beyond a reasonable doubt.

6 So let me tell you who their important witness in this  
7 case is going to be, a witness whose name did not come up at  
8 all in the government's opening statement, and I understand why  
9 and you will understand why. They are not the government. You  
10 are the government. They get to call themselves the government  
11 in a trial because that's how it works. The government will  
12 offer this witness. The government will offer this witness.  
13 The government will introduce this exhibit. They're not the  
14 government. You're the government. I'm part of the  
15 government. Judge Daniels is, obviously, part of the  
16 government. And even Mr. Zilberberg is part of the government.

17 So they get to wear that title in a criminal trial,  
18 but they don't get to take advantage of that title. They're  
19 one of the advocates, and they do a very good job, you'll see,  
20 but they are not the government. You are the government. And  
21 the reason you are the government is because the only thing  
22 that stands between the government and a person accused of a  
23 trial is private citizens like yourselves who agree to serve on  
24 a jury. And thank God for people like you, because when you  
25 serve on a jury, you will see how important that is.

1           So let me tell you just a little bit about Abraham  
2 Kahan, a person who has lied throughout his adult life. He  
3 lied to a judge 20 years ago when she sentenced him to  
4 probation and promised that he will never do a crime again. He  
5 lied to this government when he met with them in order to try  
6 and get a cooperation agreement when they asked him again and  
7 again and again and again, who owns this health care company?  
8 Who owns Crown of Life? And every time they asked him, on four  
9 occasions when he promised to tell them the truth, he said my  
10 wife Toby owns it, because he is a convicted felon, and you  
11 can't get a license to run a health care agency if you have a  
12 conviction.

13           So when they finally confronted him with the lie and  
14 they figured this out, he said to them, I was in denial. You  
15 know why he lied to them? Because he didn't want to admit the  
16 fraud. And you know what the fraud was in that health care  
17 company? They cheated nursing aids, people who do God's work  
18 at minimum wages, and he admitted to that. And what they did  
19 when they found out that he lied, they had him plead to another  
20 three counts: lying to government agents, committing health  
21 care fraud, and also committing money laundering.

22           So after he committed to the crimes in this case that  
23 he made up and he conspired to do, the punishment, if you will,  
24 was he had to plead guilty to another three crimes. And you  
25 know why that's, like, offensive? Because for the four crimes

N75DZILF

Opening - Mr. Brafman

1 he already pleaded guilty to or agreed to plead guilty to, he  
2 was looking at 95 years in prison if the judge sentenced him to  
3 the maximum crime. So the new charges that he pled guilty to  
4 gave him another 50 years. So he'd have to be 180 if he was  
5 going to live through all of those sentences, assuming the  
6 judge gave the maximum sentence.

7 So at the end of the day, ladies and gentlemen, you  
8 cannot even consider thinking about convicting Mendel  
9 Zilberberg unless you find Abraham Kahan to be credible. In  
10 the United States of America, before the jury can come to a  
11 jury of private citizens and say we have given you enough  
12 evidence that you should conclude beyond a reasonable doubt  
13 that this man is guilty, they have to provide you, I submit,  
14 with honest testimony, credible testimony, consistent  
15 testimony. So what they're going to do is they're going to put  
16 on Abraham Kahan, and Abraham Kahan is not going to say that I  
17 know that Mendel Zilberberg is involved. He's going to say I  
18 heard that he was involved. That's what he's going to say, and  
19 that's the only evidence in this case that will point at Mendel  
20 Zilberberg as being a conspirator, someone who has  
21 intentionally tried to defraud the bank.

22 Ladies and gentlemen, here's how it works, and that's  
23 what you're going to see in this case. If a person is caught  
24 having committed serious crimes, they can do one of two things:  
25 They can plead guilty or they can go to trial or they can try

N75DZILF

Opening - Mr. Brafman

1 and cooperate with the United States of America and become, if  
2 you will, after the fact a government witness, and if they do,  
3 they have to tell the truth. And if they tell the truth and if  
4 the government concludes that they've been honest, they can get  
5 a 5K letter, and a 5K letter is the golden letter Mr. Kahan was  
6 trying to get.

7 But you have to always tell the government the truth.  
8 If they catch you lying, you don't get your cooperation  
9 agreement, except in this case. In this case they caught him  
10 lying again and again and again and again to agents of the  
11 United States Attorney's Office, sitting in a room, looking  
12 them in the face and lying to their face, and yet they gave him  
13 the cooperation agreement. And the cooperation agreement  
14 allows them to tell the judge to please don't sentence me to a  
15 lot of time in jail because I cooperated with the United States  
16 Attorney's Office. And to suggest that he is worthy of belief  
17 by the government, if they suggest that to you, I think that's  
18 going to be offensive, you will conclude, because he committed  
19 one scam after another after another. And when you ask  
20 Mr. Kahan how many times did you violate the law in the last 20  
21 years, I'm going to wait with bated breath to see what he says,  
22 because throughout his life he's been a thief and a liar and a  
23 fraudster, as that term is going to be used in this case.

24 So I ask you to keep an open mind, and I ask you to be  
25 fair to Mr. Zilberberg. And as Judge Daniels — Judge Daniels

N75DZILF

Opening - Mr. Brafman

1 instructs you and he has already told you, a defendant is  
2 presumed innocent. When the government files charges against  
3 anyone on any crime, he or she is presumed innocent, and in  
4 order to get the presumption of innocence off your — they have  
5 to come to you with credible evidence, consistent evidence,  
6 evidence that suggests that they have proved every element of  
7 the crimes charged beyond a reasonable doubt. And in this case  
8 they're not going to be able to do that. In this case there is  
9 a flawed theory.

10 So keep in mind that this man is not charged with  
11 being a good director or a bad director. This is not a civil  
12 lawsuit. This is not a civil lawsuit. This is a criminal  
13 case. And you have to understand the seriousness of what's  
14 going on here, and you have to treat his life as you would make  
15 an important decision in your own life. And I suggest that  
16 when you evaluate Mr. Kahan at the end of the case, you would  
17 never rely on him to make an important decision in your own  
18 life. That's the test you will have to conclude, not whether  
19 you like him or you dislike him, whether or not in an important  
20 decision in your life, would you rely on him? And I suggest,  
21 with great respect, that no one in this room will take the  
22 position that you — that he could be relied on.

23 So this is the opening statement. It's at the  
24 beginning of the trial. So far you haven't heard any evidence.  
25 You've heard opening statements by a young prosecutor and



N75DZILF

Opening - Mr. Brafman

1 you've heard opening statements from me. I suggest that at the  
2 end of the case, you will conclude that my opening statement  
3 will ring true, and nothing they can say to you, no document  
4 they can show to you will overcome the baggage that they come  
5 into this case with, because the baggage they come into the  
6 case with is Abraham Kahan. And Abraham Kahan sat in their own  
7 office, looked them in the eye, and lied again and again and  
8 again until they caught him. And when they caught him, they  
9 still gave him a cooperation agreement.

10 And he has not yet been sentenced. He's on bail. He  
11 will come into this courtroom. He will swear to tell the  
12 truth, the whole truth, nothing but the truth. I ask you to  
13 wait, not just his direct examination. I ask you to keep an  
14 open mind through the cross-examination because what you're  
15 going to see is that to suggest that he is someone who is  
16 credible is offensive, and to suggest to you that you should  
17 rely on him to convict a private citizen of a serious crime, I  
18 suggest that you will hesitate to even think about doing that.

19 So when you go back into the jury room, I want you to  
20 think about what I have said, I want you to listen to the  
21 Court's instructions, and I want you to think about the lies  
22 that Mr. Kahan will have admitted to over and over and over  
23 again. And I suggest that the only one verdict that will be  
24 fair, if you apply the law and you listen to the evidence and  
25 you evaluate it, if you evaluate it very carefully, I submit

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Opening - Mr. Brafman

1 the verdict will be, Mr. Zilberberg, you're not guilty of this  
2 crime. The government has failed to prove you guilty. And  
3 accordingly, I suggest that you will come back into this  
4 courtroom after deliberating and your foreperson, whoever that  
5 might be, will rise to deliver the verdict, and in a strong,  
6 confident voice will announce the verdict: Mr. Zilberberg,  
7 you're not guilty.

8 Thank you very much, ladies and gentlemen.

9 THE COURT: Will the government call its first  
10 witness.

11 MS. McLEOD: Yes, your Honor. Give us one second to  
12 move the podium.

13 THE COURT: Yes, sure.

14 MS. McLEOD: Your Honor, before we call the first  
15 witness, we have a couple stipulations to read.

16 THE COURT: Sure. A stipulation, ladies and  
17 gentlemen, I'll give you further instructions later on, it's  
18 just an agreement by the parties that certain facts are true  
19 or, if a certain witness would come in, that witness would give  
20 certain testimony. It saves us time from calling all of those  
21 individual witnesses.

22 MS. McLEOD: It is hereby stipulated and agreed  
23 between the parties that Government Exhibits 301 through 309,  
24 including sub-exhibits, are true and correct account files  
25 maintained by Citibank. These account files contain records

1 made at or near the time of the acts they record, by or from  
2 information transmitted by a person with knowledge of the  
3 matter set forth in the records or kept in the course of  
4 regularly conducted business activity, and it was the regular  
5 practice of that business to make the records.

6 Government Exhibits 310 and 311, including  
7 sub-exhibits, are true and correct account files maintained by  
8 HSBC. These — and there's similar language in the second  
9 paragraph as in the first paragraph about business records.

10 Third paragraph reads: Government Exhibits 214, 216,  
11 and 217 are true and correct records of Valley National Bank,  
12 and there's similar language as well about business records in  
13 that paragraph which I will not read.

14 Government Exhibit 215 is a true and accurate copy of  
15 a loan forbearance agreement dated October 2011. Government  
16 Exhibits 219, 221, and Defense Exhibit 204 are true and  
17 accurate copies of property deeds. And it is further  
18 stipulated and agreed that this stipulation which is marked as  
19 Government Exhibit 1001 may be received in evidence as a  
20 government exhibit at trial.

21 So the government offers Government Exhibit 1001.

22 THE COURT: Are you just offering 1001?

23 MS. McLEOD: Just the stipulation for now.

24 THE COURT: All right. Any objection?

25 MR. KAPLAN: No, your Honor.

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Opening - Mr. Brafman

1 THE COURT: It will be admitted into evidence.

2 (Government's Exhibit 1001 received in evidence)

3 MS. McLEOD: And the second stipulation: It is hereby  
4 stipulated and agreed between the parties that Government  
5 Exhibits 201 to 213 and 220, including sub-exhibits, are true  
6 and correct business records used and maintained by Park Avenue  
7 Bank in connection with assessing and issuing loans and lines  
8 of credit. And this paragraph contains similar language  
9 regarding business records as in the last stipulation.

10 Government Exhibits 801 to 816 are true and correct  
11 copies of minute entries relating to meetings of Park Avenue  
12 Bank's board of directors and subcommittees of Park Avenue  
13 Bank's board of directors.

14 Government Exhibits 51, 52, and 312 to 319, including  
15 sub-exhibits, are true and correct Park Avenue Bank business  
16 records.

17 It is further agreed that this stipulation, which is  
18 marked as Government Exhibit 1002, may be received in evidence  
19 as a government exhibit.

20 The government offers Government Exhibit 1002.

21 THE COURT: Any objection?

22 MR. KAPLAN: No, your Honor.

23 THE COURT: It will be admitted into evidence as 1002.

24 (Government's Exhibit 1002 received in evidence)

25 MS. McLEOD: The government calls Herschel Sauber.

N75DZILF

Sauber - Direct

1 THE COURT: Would you step up into the witness box.  
2 Just remain standing for a minute.

3 HERSCHEL SAUBER,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 THE COURT: You can be seated, sir. Just pull that  
7 microphone to your mouth. Keep your voice up.

8 You can inquire, Ms. McLeod.

9 DIRECT EXAMINATION

10 BY MS. McLEOD:

11 Q. Mr. Sauber, how old are you —

12 THE COURT: Sorry. Have him state his name and spell  
13 it for the court reporter.

14 Q. Could you please state and spell your last name for the  
15 record.

16 A. My name is Herschel Sauber, H-e-r-s-c-h-e-l; last name,  
17 S-a-u-b-e-r.

18 Q. How old are you?

19 A. I'm 51 years old.

20 Q. What city do you live in?

21 A. In Brooklyn, New York.

22 Q. What's your educational background?

23 A. After I finished high school and went to college to get my  
24 prerequisites, I did an apprenticeship for 1,900 hours to get  
25 my certification as an orthotist.

N75DZILF

Sauber - Direct

1 Q. What do you do for work?

2 A. I'm an orthotist and a prosthetist. I make artificial  
3 limbs and orthotic devices, which are braces or —

4 Q. Do you work for a particular company?

5 A. Yes. I work for Orthocraft Inc.

6 Q. What's your position there?

7 A. I'm the owner of the company.

8 Q. And how long have you worked at Orthocraft?

9 A. I think it's 20 — 29 years.

10 Q. Directing your attention to 2009, did you take out a loan  
11 from Park Avenue Bank?

12 A. Yes, I did.

13 Q. Were you ever interviewed by law enforcement regarding that  
14 loan?

15 A. I have been, yes.

16 Q. Did you have an attorney when you met with law enforcement?

17 A. I did.

18 Q. Did you have additional meetings with the prosecutors in  
19 this case?

20 A. Yes.

21 Q. And after those discussions, did you, your lawyer, and the  
22 prosecutor come to an agreement?

23 A. Yes, we did.

24 Q. What was that agreement?

25 A. The agreement was that the prosecution wasn't going to

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Sauber - Direct

1 prosecute me, and I had to just tell the truth and agreed not  
2 to commit any crimes.

3 MS. McLEOD: Mr. Carbone, if you could show just for  
4 the witness and counsel what's been marked as 3507-016.

5 Q. I just want you to take a look at this silently.

6 Mr. Carbone, if you could scroll through it slowly so  
7 the witness can see the document.

8 A. It just went blank.

9 Q. Mine, too.

10 Mr. Sauber, do you recognize this document?

11 A. Yes.

12 Q. What is it?

13 A. This is the agreement that I have with the prosecution.

14 MS. McLEOD: The government offers 3507-16.

15 THE COURT: Any objection?

16 MR. KAPLAN: No objection.

17 THE COURT: It will be admitted into evidence.

18 (Government's Exhibit 3507-16 received in evidence)

19 MS. McLEOD: If we could just go to the second page,  
20 Mr. Carbone.

21 BY MS. McLEOD:

22 Q. Just want to draw your attention to a couple points here.

23 In the first paragraph, it states the U.S. Attorney's Office

24 will not criminally prosecute you for any crimes related to (1)

25 participation in a bank fraud involving the acquisition by

N75DZILF

Sauber - Direct

1 false and fraudulent pretenses of a \$1.4 million business loan  
2 from Park Avenue Bank in 2009 and false representations that  
3 you made directly to Valley National Bank representatives. Do  
4 you see that?

5 A. Yes, I do.

6 THE COURT: Did you want this on the screen for the  
7 jury?

8 MS. McLEOD: Oh, I'm sorry. Mr. Carbone, if you could  
9 publish.

10 Thank you, your Honor.

11 Q. Is that consistent with your understanding of your  
12 agreement?

13 A. Yes, it is.

14 MS. McLEOD: If we could look at paragraph 3,  
15 Mr. Carbone, paragraph 3 on page 1. Thank you, Mr. Carbone.

16 Q. Is this what we're looking at, the requirements that you  
17 are required to do as part of the agreement?

18 A. Yeah, that's my understanding.

19 Q. And is the very first thing you're required to do is to  
20 truthfully disclose all information about your activities to  
21 the government?

22 A. Yes.

23 MS. McLEOD: Thank you, Mr. Carbone.

24 Q. Do you know someone named Abraham Kahan?

25 A. Yes, I do.



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Sauber - Direct

1 Q. And how do you know him?

2 A. I was introduced to him through my brother-in-law who went  
3 to school with him many, many years ago. I think it was at a  
4 Purim party.

5 Q. What sort of relationship did you have with Mr. Kahan?

6 A. When he introduced him to me, he told me that he was in the  
7 medical supply business, which involved, like, wheelchairs or  
8 walkers, hospital beds. And we exchanged information, and we  
9 kind of kept in touch because I had patients that — that  
10 sometimes needed some wheelchairs, and I would refer them to  
11 him, and if he had a patient that was an amputee or needed a  
12 device, he would refer them to me.

13 Q. Did Mr. Kahan ever discuss his financial situation with  
14 you?

15 A. Yes.

16 Q. What did he say about it?

17 A. Like, at the beginning, it was how well his business was  
18 doing, but over the years he ran into some difficulty, and he  
19 asked me for some help.

20 Q. What sort of help did he ask you for?

21 A. Initially asked me to give him a short-term personal loan,  
22 and then eventually to help him obtain a loan through the bank.

23 Q. Just focusing on the personal loans, did you end up lending  
24 him money?

25 A. Yes, I did.

N75DZILF

Sauber - Direct

1 Q. About how much did you lend him?

2 A. I think it was about \$70,000 over the years.

3 Q. Did you charge him any interest?

4 A. I did not.

5 Q. Why not?

6 A. Because according to Jewish law, if you give a person a  
7 loan, to a friend or a fellow Jew, it's not proper to charge  
8 them any interest.

9 Q. Did Kahan ever pay you back for those loans?

10 A. He did partially.

11 Q. You mentioned that he also eventually asked you to help him  
12 get a loan. What was the specific request that he made to you?

13 A. Well, he came to me one day, and he told me that he had  
14 sold his medical supply business and he was getting payments  
15 every month. But I don't remember the details, but he was —  
16 the person he had sold it to stopped giving him payments. And  
17 he had the opportunity to go into a new business, and he told  
18 me he was also making a wedding at that time, and he needed  
19 help getting a loan to be able to start over, I guess.

20 Q. And what did he want you to do to help him get the loan?

21 A. So he wanted me to help him — well, I'm not 100 percent  
22 clear how I understood it, but it was something to the effect  
23 of helping him cosign — of me cosigning on a loan to guarantee  
24 it with the bank.

25 Q. Did he tell you why he needed your help getting a loan?

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Sauber - Direct

1 A. Yeah. He told me he was investing in a home health care  
2 company.

3 Q. Did he tell you why he couldn't get a loan by himself?

4 A. Yeah. He told — he told me he had some tax — tax issues.  
5 That he was still straightening out some tax payments.

6 Q. When he first asked you — approximately when, if you  
7 remember, did this conversation occurred?

8 A. It's close to 15 years ago. I think it was in — sometime  
9 either late '08 or beginning of '09, somewhere around that  
10 time.

11 Q. And when Mr. Kahan asked you for help getting a loan, how  
12 did you initially respond to him?

13 A. I was very uncomfortable. I tried brushing him aside. By  
14 nature I have a difficult time telling people no, but I just  
15 didn't feel comfortable doing it and kept on making excuses why  
16 I couldn't, and he just kept on coming back.

17 Q. And eventually what happened?

18 A. Eventually, I felt really bad for him. He was in a  
19 difficult situation, and I agreed to do it.

20 Q. Do you remember what the initial amount of the loan was to  
21 be?

22 A. Yeah. Initially, he had told me he needed \$700,000.

23 Q. And did that, the amount of that loan, ever change?

24 A. Yeah.

25 Q. How did it change?

N75DZILF

Sauber - Direct

1 A. I'm not sure what you mean, how.

2 Q. What did the amount change to?

3 A. Oh, it changed to 1.4 million at the end, yeah.

4 Q. Was any part of the loan money meant to go to you?

5 A. No.

6 Q. Who did you believe the loan money was for?

7 A. For Abraham Kahan.

8 Q. What did you believe the loan money was for?

9 A. It was to invest in this — in this home health care  
10 agency. He told me he was also using part of the money because  
11 he was making a wedding at that time. That's all I know.

12 Q. Who did you believe was going to repay the loan?

13 A. It was either Abraham Kahan personally or he might have  
14 said that the business that he was investing in was going to  
15 make payments on it.

16 Q. Now, did Mr. Kahan — why did you agree to help Mr. Kahan  
17 with the loan?

18 A. I considered him a friend, also viewed him as a successful  
19 businessperson in the community. He had a — as far as I knew,  
20 people looked up to him. I had confidence that he was able to  
21 do it. I felt really bad. I saw a person who was able to  
22 support his family and he — he had a difficult time, and he  
23 made it sound like it wasn't of his doing. It was that his  
24 business deal went sour when he sold it and he wasn't getting  
25 repaid, and he had a great opportunity to start over again.

N75DZILF

Sauber - Direct

1 Q. Did Kahan do anything to give you reassurance that he would  
2 pay the loan back?

3 A. Yes, he did.

4 Q. What did he do?

5 A. He agreed to put his house in my name as collateral.

6 Q. And whose idea was that?

7 A. Don't remember exactly, but I remember at some point he's,  
8 like, I'll give you the house. I said, I don't know. Let me  
9 think about it. And I think that ultimately gave me the  
10 reassurance that, you know, if he was that committed to put his  
11 house on the line to — to repay the loan.

12 Q. And were you in fact eventually put on the deed to  
13 Mr. Kahan's house?

14 A. Yes, I was.

15 Q. After you were added to the deed of that house, did you  
16 consider that house to be your house?

17 A. I did not.

18 Q. Did you plan to keep that house?

19 A. No.

20 Q. What was the plan?

21 A. The plan was, as soon as the loan was repaid, to transfer  
22 the home back to him.

23 MS. McLEOD: Mr. Carbone, if you could pull up just  
24 for the witness and counsel what's marked as Government  
25 Exhibit 219, and you can scroll through. I think it's about

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Sauber - Direct

1 three pages, the first three pages, for Mr. Sauber.

2 Q. Mr. Sauber, do you recognize this document?

3 Mr. Carbone, you can go to the first page.

4 A. I guess this is the paper that transferred the house into  
5 my name, I guess.

6 Q. If we look at — if we just go to the third page, is that  
7 your wife's signature?

8 A. No.

9 Q. Is the deed between your wife — I'm sorry, is that  
10 Mr. Kahan's wife's signature?

11 A. I don't know her signature.

12 Q. Is it signed by someone in the signature block Ms. Toby  
13 Kahan?

14 A. Yes, it is.

15 MS. McLEOD: This exhibit was part of the stipulation.  
16 The government offers Government Exhibit 219.

17 THE COURT: Any objection?

18 MR. KAPLAN: No objection, your Honor.

19 THE COURT: It will be admitted into evidence as 219,  
20 Government Exhibit.

21 (Government's Exhibit 219 received in evidence)

22 MS. McLEOD: Mr. Carbone, if you could turn to page 1.

23 BY MS. McLEOD:

24 Q. I'll just highlight a couple of things in the document,  
25 Mr. Sauber. If we look at the very top portion of the page, do

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Sauber - Direct

1 you see it says document date 6/5/2009?

2 A. Yes.

3 Q. And document type, deed?

4 A. Yes, I do.

5 MS. McLEOD: Then if you go down, Mr. Carbone, to the  
6 middle of the page, yeah, the sort of the whole middle of the  
7 page.

8 Q. Under address it says "1264 57th Street," and what address  
9 is that?

10 A. That is the residence of Abraham Kahan, as I understood.

11 Q. I think we touched on this, but who is Toby Kahan?

12 A. It's Abraham Kahan's wife.

13 Q. And as grantor/seller, is that right?

14 A. Yes.

15 Q. And then the grantee/buyer is who?

16 A. Myself.

17 MS. McLEOD: And Mr. Carbone, if we could turn to  
18 page 3.

19 Q. And if we just look at the top of the document, do you see  
20 that it says this indenture was made between Toby Kahan and  
21 you, and then towards the bottom it says in consideration of  
22 \$10?

23 A. I do see that, yes.

24 MS. McLEOD: Thank you, Mr. Carbone.

25 Q. After the house was signed over to you or you were added to

N75DZILF

Sauber - Direct

1 the deed, did anything change in terms of who was living in the  
2 house?

3 A. No, not as far as I know.

4 Q. Are you still on the deed of that house today?

5 A. I am not.

6 Q. What happened?

7 A. Well, this is moving ahead, but after the loan hadn't been  
8 repaid, he kept on reassuring me that he is going to get the  
9 loan paid, he's going to get his taxes straightened out, and  
10 he's going to be able to pay the loan off. He came to me one  
11 day, and he said he's driving from my house straight upstate to  
12 either his accountant or attorney, I don't really remember  
13 exactly, but if I could sign over the house to him, we'll be  
14 taken care of right away and the loan will get paid off. And I  
15 believed him.

16 Q. OK.

17 A. So I signed the papers to transfer the home back to him.

18 MS. McLEOD: Mr. Carbone, if you could pull up for the  
19 witness and counsel what's marked as Government Exhibit 221.  
20 You can just scroll a little bit. This document was also part  
21 of one of the stipulations, the government offers Government  
22 Exhibit 221.

23 THE COURT: Any objection?

24 MR. KAPLAN: No objection.

25 THE COURT: It will be admitted into evidence as



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Sauber - Direct

1 Government Exhibit 221.

2 (Government's Exhibit 221 received in evidence)

3 MS. McLEOD: If we just look at the first page,  
4 Mr. Carbone.

5 Q. And towards the top, just drawing your attention, it says  
6 document date February 17, 2010. Do you see that?

7 A. Yeah.

8 MS. McLEOD: If we can go to the middle of the page,  
9 Mr. Carbone.

10 Q. All right. Here, grantor/seller is you, and grantee/buyer  
11 is Toby Kahan, correct?

12 A. Yes.

13 MS. McLEOD: Thank you, Mr. Carbone.

14 Q. All right. So going back to the Park Avenue Bank loan, did  
15 you have to do anything to help get the loan processed?

16 A. Yes.

17 Q. What did you have to do?

18 A. I know that Mr. Kahan came to my house several times. He  
19 told me he's going to make it very convenient for me. I'm not  
20 going to have to do anything. Any papers that they need, he'll  
21 come to me. So he picked up tax returns and I'm not sure what  
22 else, but anytime they needed documents, he came to pick it up.

23 Q. Did you sign documents for the loan?

24 A. Yes, I did.

25 Q. Did you read the documents before you signed them?

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Sauber - Direct

1 A. I did not.

2 Q. Why not?

3 A. I wish I knew. I trusted him, I really did.

4 MS. McLEOD: Mr. Carbone, if you could pull up for the  
5 witness and counsel what's been marked as Government  
6 Exhibit 211 for identification, and if you can scroll down a  
7 little bit just to allow Mr. Sauber to look. If you could  
8 scroll down to the signatures. And if you could continue  
9 scrolling a little bit more, Mr. Carbone, just to show the rest  
10 of it, and down to the signatures.

11 Q. Do you recognize these documents, Mr. Sauber?

12 A. I think these are the loan documents. I don't remember  
13 reading it, but yeah.

14 Q. Are these your — is your signature on the documents?

15 A. Yes, it is.

16 MS. McLEOD: Your Honor, the government offers  
17 Government Exhibit 211.

18 MR. KAPLAN: No objection.

19 THE COURT: It will be admitted into evidence as 211.

20 (Government's Exhibit 211 received in evidence)

21 MS. McLEOD: Mr. Carbone, if you could publish to the  
22 jury and go to the first page. And if we could expand the top  
23 portion.

24 BY MS. McLEOD:

25 Q. It says "Promissory Note." Borrower, Herschel Sauber and

N75DZILF

Sauber - Direct

1 Pauline Sauber. And who is Pauline Sauber?

2 A. She's my wife.

3 Q. And on the right it says lender, Park Avenue Bank.

4 A. Yes.

5 Q. Principal amount, \$1.4 million?

6 A. Correct.

7 Q. And date of the notice, September 15, 2009, is that right?

8 A. Yes, it is.

9 MS. McLEOD: If we could go to the third page,

10 Mr. Carbone.

11 Q. Is this your signature, Mr. Sauber?

12 A. Yes, it is.

13 Q. Did you read this document before you signed it?

14 A. I did not.

15 MS. McLEOD: All right. Mr. Carbone, if you could  
16 please go to page 4, and if you could just expand the top  
17 portion.

18 Q. So this document says "Business Loan Agreement" at the top.  
19 Do you see that?

20 A. Yes, I do.

21 MS. McLEOD: If you could go to page 9, Mr. Carbone.

22 Q. Is this your signature on the document?

23 A. Yes, it is.

24 Q. Did you read this document before you signed it?

25 A. I did not.

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Sauber - Direct

1 MS. McLEOD: OK. Let's go back to page 4,  
2 Mr. Carbone. In about the middle of the page, it says  
3 "Representations and Warranties." A little further down.  
4 Maybe the bottom half of the page.

5 Q. Do you see that there are representations and warranties  
6 between the borrower and the lender made in this agreement?

7 A. Yes, I do.

8 Q. And under business activities, who are the people making  
9 the representations about business activities?

10 A. Myself.

11 Q. And who else in the paragraph below?

12 A. My wife.

13 MS. McLEOD: And if we go to page 5 and if we look in  
14 the middle of the page, Mr. Carbone, you can do from  
15 affirmative covenants to the bottom. OK.

16 Q. It says at the top of this section: "Borrower covenants  
17 and agrees with lender that so long as this agreement remains  
18 in effect, borrower will." And then about second or third from  
19 the bottom, it says "loan proceeds." Do you see that?

20 A. Yes, I do.

21 Q. It says the borrower covenants with the lender to use all  
22 loan proceeds solely for borrower's business operations unless  
23 specifically consented to the contrary by lender in writing.

24 Do you see that?

25 A. Yes, I do.

N75DZILF

Sauber - Direct

1 Q. Was that an accurate representation?

2 A. No, I never — the money never came to my business.

3 MS. McLEOD: All right. Mr. Carbone, if you could  
4 please go to page 11.

5 Q. And at the top it says "Disbursement Request and  
6 Authorization." Do you see that?

7 A. Yes, I do.

8 MS. McLEOD: And Mr. Carbone, if you could show the  
9 main part of this page, the middle half.

10 Q. OK. Do you see it says the primary purpose of the loan is  
11 business?

12 A. Yes.

13 Q. And then it says specific purpose: "The specific purpose  
14 of this loan is working capital." Was that true?

15 A. Not for my business, no.

16 Q. Now, did you yourself — thank you, Mr. Carbone.

17 Did you yourself directly provide any information  
18 about the loan to Park Avenue Bank?

19 A. No. It was always through Abraham Kahan.

20 MS. McLEOD: If we can pull up for witness and counsel  
21 what's been marked for identification as Government  
22 Exhibit 220. I'll just scroll down.

23 MR. BRAFMAN: Excuse me, your Honor. Can I step out?  
24 Mr. Kaplan is going to remain here. Can I step out for a  
25 moment?

N75DZILF

Sauber - Direct

1 THE COURT: Sure.

2 MR. BRAFMAN: Thank you.

3 MS. McLEOD: Mr. Carbone, if you can just scroll down  
4 so that counsel can see the document and the witness can see  
5 the document.

6 This exhibit was part of one of the stipulations. The  
7 government offers Government Exhibit 220.

8 MR. KAPLAN: No objection.

9 THE COURT: It will be admitted into evidence as  
10 Government Exhibit 220.

11 (Government's Exhibit 220 received in evidence)

12 MS. McLEOD: If we can go to the first page,  
13 Mr. Carbone.

14 BY MS. McLEOD:

15 Q. Mr. Sauber — if we go to the second page, actually, sorry,  
16 Mr. Carbone.

17 Is that your signature, Mr. Sauber?

18 A. Yes, it is. That's not my handwriting.

19 Q. OK. And if we can go back up to the first page, did you  
20 prepare this document, Mr. Sauber?

21 A. No. It has my name spelled wrong, and I never filled this  
22 out.

23 Q. It says at the top "Statement of Personal Net Worth as of  
24 June 30, 2009," and then it has your name misspelled. At the  
25 bottom of the page, it lists real estate, and it says

N75DZILF

Sauber - Direct

1 1477 East 27th Street, Brooklyn. And do you recognize that  
2 address?

3 A. Yes, I do.

4 Q. What address is that?

5 A. That's my private — primary residence.

6 Q. And then the second property listed is 1264 57th Street,  
7 Brooklyn, and do you recognize that address?

8 A. Yes, I do.

9 Q. What address is that?

10 A. That's Abraham Kahan's address.

11 Q. Is that the property that you were added to the deed for?

12 A. Yes.

13 Q. At the time of this statement of personal net worth, did  
14 you consider the property at 57th Street to be part of your own  
15 net worth?

16 A. I did not.

17 MS. McLEOD: Thank you, Mr. Carbone. And if we can  
18 pull up just for witness and counsel what's been marked for  
19 identification as Government Exhibit 208, and we'll just scroll  
20 so counsel can see the document.

21 Government Exhibit 208 was subject to one of the  
22 stipulations. The government would offer Government  
23 Exhibit 208.

24 MR. KAPLAN: No objection.

25 THE COURT: It will be admitted into evidence as

N75DZILF

Sauber - Direct

1 Government Exhibit 208.

2 (Government's Exhibit 208 received in evidence)

3 BY MS. McLEOD:

4 Q. So, Mr. Sauber, at the very top it says the "Park Avenue  
5 Bank Loan Presentation." Date, August 31, 2009. Do you see  
6 that?

7 A. Yes, I do.

8 MS. McLEOD: And if you could go to the signature  
9 blocks, Mr. Carbone.

10 Q. Did you sign this document?

11 A. I did not.

12 Q. Do you know or remember whether you saw this document in  
13 2009?

14 A. I don't remember.

15 MS. McLEOD: Let's go back to the first page.

16 Q. All right. It says borrower, Herschel Sauber, Pauline  
17 Sauber. Is that right?

18 A. Yes.

19 Q. And under line amount it says "\$1.4 million unsecured line  
20 of credit available for direct debt. Purpose: To be used for  
21 working capital for business investments. (See background  
22 section)."

23 If we look at the very bottom of the first page where  
24 it says "existing relationship," says "Mr. Sauber is a client  
25 of Mendy Zilberberg, PAB board member." Is that statement



N75DZILF

Sauber - Direct

1 accurate?

2 A. No, I don't think I've ever met him or had dealings with  
3 him.

4 Q. Have you ever been a client of Mendy Zilberberg?

5 A. Not to my knowledge, no.

6 Q. Did you ever tell anyone that you were a client of Mendy  
7 Zilberberg?

8 A. No.

9 (Continued on next page)

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N75DZILF

Sauber - Direct

1 (In open court; jury present)

2 Q. What's your -- do you know Mendy Zilberberg?

3 A. I do not.

4 Q. Do you have any knowledge of whether Mr. Zilberberg was  
5 involved with this loan?

6 A. I have no knowledge at all.

7 Q. Okay. If we can go to page 2.

8 And just looking at the bottom, where it says "debt  
9 service," one of the things it says is, K-1 income, SSSZ, LLC.  
10 Are you familiar with what that is?

11 A. Yes, I am.

12 Q. What is that?

13 A. It was an investment I made along with three other friends.  
14 I don't remember what year, but it was in -- like a real estate  
15 investment. And we would get returns on it some years, some  
16 years we wouldn't, but --

17 Q. Was \$70,000 the accurate representation of your portion of  
18 the K-1 income?

19 A. No.

20 Q. Was it higher or lower?

21 A. Lower, I would assume. We were four partners.

22 MS. MCLEOD: Mr. Carbone, if you could go to the top  
23 part of page 2, where it says "business description."

24 Q. All right. So it says, "Mr. Sauber owns Orthocraft, Inc.  
25 which produces artificial limbs, braces, and other orthopedic

N75DZILF

Sauber - Direct

1 products." It continues on to say, "he owns two smaller  
2 companies."

3 Were these statements correct?

4 A. Yes, it is.

5 Q. And then I want to go to -- if we could just draw your  
6 attention to the third paragraph. It says, "Mr. Sauber stated  
7 that he needs funds to make additional investments, such as  
8 down payments on properties, et cetera. The flexibility of a  
9 line of credit will make these investment possible."

10 Was this statement accurate?

11 A. No.

12 Q. Did that information come from you?

13 A. No, not to my recollection. I didn't have any dealings  
14 with the bank.

15 MS. MCLEOD: Thank you, Mr. Carbone.

16 Q. Mr. Sauber, are you familiar with a document called a heter  
17 iska?

18 A. Yes, I am.

19 Q. What is it?

20 A. I'm not well versed in it, but my understanding is, as we  
21 discussed before, in Jewish law you don't charge interest on  
22 loans. I mean, there is kind of a way around it if you  
23 structure the loan as a business deal, and so people are able  
24 to borrow money and invest in businesses or -- and collect  
25 interest.

N75DZILF

Sauber - Direct

1 Q. And is the heter iska the document memorializing the  
2 business deal?

3 A. Yeah.

4 Q. Did you sign a heter iska to allow you to participate in  
5 this loan?

6 A. I have some sort of recollection about it, yes.

7 Q. Do you remember who the heter iska would have been between?

8 A. It would have only been with Abraham Kahan.

9 Q. Mr. Sauber, did you attend the loan closing?

10 A. Yes, I did.

11 Q. And to the best of your recollection, who else attended the  
12 closing?

13 A. Abraham Kahan.

14 Q. Anyone else?

15 A. Oh, at the closing?

16 Q. At the closing.

17 A. Well, we sat at a desk, and there was a gentleman in a suit  
18 I assumed worked at the bank, and there was another Hasidic  
19 individual hovering around, checking things out, walking away,  
20 coming back.

21 Q. Did you keep any of the closing documents?

22 A. No. I wasn't given anything at the bank.

23 Q. Other than signing the closing documents, did you sign  
24 anything else?

25 A. Yes.

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Sauber - Direct

1 Q. What did you sign?

2 A. So the bank officer brought out a checkbook, and he handed  
3 it over. I don't remember if he left at that point or he was  
4 there. I remember something about him leaving in the middle.  
5 But they asked me to sign two checks, blank checks, and  
6 afterwards they told me, "okay, you can go, and we'll finish  
7 everything up."

8 Q. Did the bank ultimately approve the loan?

9 A. To my understanding, yes.

10 Q. And what happened when the money was disbursed by the bank?

11 A. I have no idea.

12 Q. After the loan closed, what happened -- as far as your  
13 understanding, happened with the loan?

14 A. My understanding is it went to Abraham Kahan to go into the  
15 business he was investing in, but he was the only person I know  
16 of --

17 Q. Did you ever receive any communications with the bank after  
18 the loan had closed?

19 A. Yes, I did.

20 Q. What were those communications?

21 A. The only communications I received, I don't know how many  
22 months later, or I don't remember how long, but I got a phone  
23 call when they could expect the next payment.

24 Q. Sorry. The bank asked you when they could expect the next  
25 payment?

N75DZILF

Sauber - Direct

1 A. Yes.

2 Q. And what did you say to them?

3 A. I said, I don't know. Let me find out through the guy  
4 that's dealing with it.

5 Q. And what did you do after?

6 A. I called Abraham Kahan right away, and said, what's going  
7 on. I wasn't receiving any of the bank -- like the payment --  
8 I got no mail from the bank, so I was totally unaware of it.  
9 It wasn't coming to me.

10 Q. And what did Mr. Kahan say?

11 A. It's been years. I don't remember exactly what he said,  
12 but he was like, don't worry. I'm going to take care of it.  
13 I'm going to speak to my -- I don't have an exact recollection,  
14 but he kind of reassured me he was going to get to the bottom  
15 of it.

16 Q. Did you hear from the bank again about the loan?

17 A. Yes, I did.

18 Q. What happened?

19 A. Well, it came to my house. I had my office in the house at  
20 that time, so they walked in one day. I think it was two  
21 representatives from the bank.

22 Q. And what did they say?

23 A. I don't remember exactly what they said, but something like  
24 "when can we expect to get paid."

25 Q. And what did you tell them?

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Sauber - Direct

1 A. I mean, I freaked out. I was like, I've just got to get  
2 them out of here. I'm like, let me get back to you. Let me  
3 try to figure out what's going on.

4 I didn't know what to say at that time. I think it  
5 really hit me like something's really off.

6 Q. At that point, did you tell the bank you weren't really the  
7 borrower on the loan?

8 A. No, I didn't really volunteer any information to them.  
9 Whatever they asked me, I kind of nodded and said, sure. I  
10 mean, just to get them out.

11 Q. And what happened -- what ultimately happened with the  
12 loan?

13 A. What happened? They defaulted.

14 Q. And what did you do once it defaulted, or what happened  
15 after it defaulted?

16 A. Oh, what happened was that, you know, Mr. Kahan is like,  
17 don't worry. I'm going to take care of this. We can negotiate  
18 with the bank. I'm going to hire an attorney. It's not going  
19 to cost you anything. I'm going to take care of everything,  
20 and we're going to get it paid off.

21 Okay. Because this is not what I signed up for. I  
22 only did this to help you. I don't deserve this.

23 And, I mean, he was very remorseful. He felt bad  
24 about it, and he said he was going to handle it.

25 Q. Did you end up coming to an agreement with the bank?

N75DZILF

Sauber - Direct

1 A. Yes.

2 Q. And what was your involvement in negotiating that  
3 agreement?

4 A. I had no involvement at all.

5 MS. MCLEOD: Okay. Mr. Carbone, if you can pull up  
6 for the witness and counsel what's been marked as Government  
7 Exhibit 215. And if we can scroll to the signature blocks.

8 Q. Okay. Is that your signature, Mr. Sauber?

9 A. Yes, it is.

10 MS. MCLEOD: Your Honor, the government offers  
11 Government Exhibit 215.

12 THE COURT: Any objection?

13 MR. KAPLAN: No objection.

14 THE COURT: It will be admitted into evidence as  
15 Government Exhibit 215.

16 (Government Exhibit 215 received in evidence)

17 MS. MCLEOD: Let's go back to the top, Mr. Carbone.

18 Q. Mr. Sauber, it says "forbearance agreement" at the top.

19 Do you see that?

20 A. Yes, I do.

21 Q. What's the date?

22 A. October 5, 2011.

23 Q. And it says it's being entered into between plaintiff, VNB  
24 New York, and yourself, and your wife.

25 Why was it being entered into by VNB, rather than Park



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Sauber - Direct

1 Avenue Bank?

2 A. Well, my understanding is the bank failed, and the loan was  
3 bought by VNB.

4 MS. MCLEOD: And if we go to page 3, Mr. Carbone, and  
5 if we can look at 2A.

6 Q. It says, "judgment debtors shall pay judgment creditor a  
7 total of \$800,000, the settlement amount."

8 What does this settlement amount represent?

9 A. It represents the amount the bank was willing to accept in  
10 lieu of the loan going into default.

11 Q. In lieu of the full amount being paid?

12 A. Yeah.

13 Q. Have you paid back that amount?

14 A. Personally, no.

15 Q. Do you still have an obligation to repay \$800,000 to the  
16 bank?

17 A. I have a judgment that's still going on. I'm not sure if  
18 -- I don't know what the total amount is.

19 Q. Did you receive any of the proceeds of the \$1.4 million  
20 loan?

21 A. I did not.

22 Q. Did you receive any financial benefit from the Park Avenue  
23 Bank loan?

24 A. No.

25 MS. MCLEOD: One moment, your Honor.

N75DZILF

Sauber - Direct

1 MS. MCLEOD: No further questions, your Honor.

2 THE COURT: Why don't I give the jury a ten-minute  
3 break before we go into cross-examination.

4 Ladies and gentlemen, we'll take ten minutes. Don't  
5 discuss the case. Keep an open mind. I'll see you in ten  
6 minutes.

7 You don't have to stay in the jury room, but just be  
8 back in ten minutes.

9 (Continued on next page)

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Sauber - Direct

1 (In open court; jury not present)

2 THE COURT: You can step down.

3 We'll continue in ten minutes.

4 MS. MCLEOD: Thank you, your Honor.

5 (Recess taken)

6 (Continued on next page)

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N75DZILF

Sauber - Cross

1 (In open court; jury present)

2 THE COURT: You can be seated. Thank you.

3 Mr. Kaplan, cross-examination.

4 MR. KAPLAN: Yes. Thank you, your Honor.

5 THE WITNESS: May I sit down?

6 THE COURT: Yes. Thank you.

7 MR. KAPLAN: Judge?

8 THE COURT: Yes. Go ahead.

9 CROSS-EXAMINATION

10 BY MR. KAPLAN:

11 Q. Good afternoon, Mr. Sauber.

12 A. Good afternoon.

13 Q. My name is Jacob Kaplan, and I'm one of the attorneys of  
14 the Mendel Zilberberg Law Firm.

15 I'm going to ask you some questions. If I talk too  
16 fast or you don't understand my question, please let me know,  
17 and I'll try to reword it. Okay?

18 A. Sure.

19 Q. You testified on direct you first met Abraham Kahan in the  
20 mid '90s, correct?

21 A. I don't remember the exact year. I know it was more than  
22 20 years ago.

23 Q. So it's the late '90s, maybe 2000's?

24 A. Possibly.

25 Q. But at the time of the 2009 loan, about how many years did

N75DZILF

Sauber - Cross

1 you know him?

2 A. A long time. A long time.

3 Q. It's fair to say that you trusted him when he asked you to  
4 take out the loan for him, didn't you?

5 A. Yes, I did.

6 Q. In fact, you trusted him years earlier when you lent him  
7 you said around \$70,000?

8 A. Yes.

9 Q. Did he ever pay back that money?

10 A. Part of it.

11 Q. About how much did he pay back?

12 A. I think he paid back about half.

13 Q. And what about the other half? He just ignored you or just  
14 never paid you back?

15 A. He didn't ignore me. He came for this loan.

16 Q. So let's talk about this loan. When he approached you in  
17 2009 to take out a loan, didn't he tell you that the reason why  
18 he couldn't take out the loan for himself was because he had  
19 tax issues?

20 A. Yes.

21 Q. He never told you that the reason why he would have trouble  
22 taking out a loan was because he was a convicted felon, did he?

23 A. No, he did not.

24 Q. In fact, he never told you that he was a convicted felon  
25 when you loaned him the \$70,000 either, did he?

N75DZILF

Sauber - Cross

1 A. He did not.

2 Q. You only found out years later that he was a convicted  
3 felon, correct?

4 A. Correct.

5 Q. Before going to Park Avenue Bank to get this loan, do you  
6 recall Abraham Kahan asking you to take out a home equity line  
7 of credit from a different bank and give him the proceeds?

8 A. I don't remember exactly, but I'm not sure.

9 Q. Well, do you recall a banker or broker named Sarah Hoffman?

10 A. Yes, I do.

11 Q. Okay. Do you recall ever trying to get a home equity line  
12 of credit on your house from Sarah Hoffman?

13 A. I think so. I don't know if she did a mortgage for us or a  
14 refinance. I don't know if it went through. Yeah, I think he  
15 recommended her one time.

16 Q. But do you remember going to her with Abraham Kahan?

17 A. Not particularly, no.

18 Q. Now, you said on direct that when you went to go take out  
19 the loan from Park Avenue Bank, before doing so, Mr. Kahan had  
20 given you the deed to his house; is that correct?

21 A. Yes, it is.

22 Q. You didn't ask him to give you the deed, did you?

23 A. I don't remember. I don't know which way it went, but I  
24 know that when he gave it to me, he gave it to me as a  
25 reassurance.

N75DZILF

Sauber - Cross

1 Q. As a reassurance that you would get repaid somehow,  
2 correct?

3 A. The loan would get repaid, yes.

4 Q. When he gave you the title to his house, you understood  
5 that he was still living there with his family, correct?

6 A. Correct.

7 Q. And you understood you were not, in fact, the owner of the  
8 house?

9 A. That is correct.

10 Q. Is it fair to say that when Abraham Kahan gave you the deed  
11 to his house, he didn't say to you "I'm giving you this deed,  
12 so you can have more assets when we go borrow money from a  
13 bank," did he?

14 A. I don't remember him telling me that.

15 Q. He just told you it was a way to protect you, that this way  
16 you would be confident that the loan would be repaid?

17 A. Yes.

18 Q. And you trusted him?

19 A. I did.

20 MR. KAPLAN: Ms. Newman, if we can pull up GX 220,  
21 which is already in evidence.

22 Q. Mr. Sauber, can you see GX 220?

23 A. Yes, I do.

24 Q. Now, you testified on direct that you never read this  
25 document, correct?

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Sauber - Cross

1 A. Correct.

2 Q. In fact, I think, as they pointed out in direct, your name  
3 is even misspelled, correct?

4 A. Yes, it is.

5 Q. Is this a document that Abraham Kahan just gave you to  
6 sign?

7 A. Well, it doesn't have my signature on it, so I didn't sign  
8 it.

9 Q. Second page?

10 A. Oh, yes, if I signed it, he brought it over to my house.

11 Q. Because Abraham Kahan was the only one you were dealing  
12 with on this loan, correct?

13 A. Yes, that's correct.

14 Q. And you trusted him so much that you didn't actually read  
15 the document before signing it?

16 A. Correct.

17 Q. And, again, even though the property is listed as 1477 East  
18 27th Street -- I'm sorry. That's your house. The 57th Street  
19 in Brooklyn, that was Mr. Kahan's house, correct?

20 A. As far as I knew, yes.

21 Q. You also see a third property that says 73 Lower Court in  
22 Connecticut?

23 A. Yes.

24 Q. Is that a property that you own?

25 A. It was me and two other friends that invested in that



N75DZILF

Sauber - Cross

1 property.

2 Q. Did you tell Mr. Kahan that you had invested in that  
3 property?

4 A. I think so, yeah.

5 Q. Is that how he was able to put that on this form?

6 A. As far as I understand.

7 MS. MCLEOD: Objection.

8 THE COURT: Overruled. You can answer.

9 A. I don't have a particular memory of it, but I don't want to  
10 assume why it's there. But it's possible I might have told  
11 him.

12 Q. Did you also tell Mr. Kahan about your K-1 with SSSZ?

13 A. I do not remember telling him that.

14 MR. KAPLAN: Ms. Newman, if you can pull up GX 208,  
15 already in evidence. If you can scroll down to the second  
16 page.

17 Q. Do you see on the bottom it says, "K-1 income, SSSZ, LLC?"

18 A. Yes, I do.

19 Q. Do you know how the bank got that information?

20 A. I have no idea.

21 Q. But you didn't give that information to the bank?

22 A. I'm not sure. It's been almost 15 years, so --

23 Q. Well, do you recall interacting with the bankers at Park  
24 Avenue Bank?

25 A. No.

N75DZILF

Sauber - Cross

1 Q. As far as you can recall, you didn't give them this  
2 information?

3 A. To the bank? No.

4 Q. Let's talk about the loan itself for a second.

5 Did Abraham Kahan tell you he needed the money to  
6 invest in a home care agency?

7 A. Yes, he did.

8 Q. Did he tell you that home care agency was going to be  
9 invested with Aron Fried?

10 A. I remember the name Fried. I didn't really pay -- I don't  
11 remember the exact name, but I do remember the name Fried.

12 Q. Being that you're also in kind of the health care industry,  
13 did you follow up and ask him what type of business he was  
14 going into?

15 A. He told me it was a home care agency. That's either  
16 nurses, or something along those lines, to patients' homes, but  
17 it was totally unrelated to my field, so --

18 Q. It was your understanding that you were taking out that  
19 money to give to him to invest in that company, correct?

20 A. I'm not sure exactly what you mean by that.

21 Q. Well, Mr. Kahan told you that he needed the loan to invest  
22 in the company, correct?

23 A. Yes.

24 Q. And you believe he's investing in a home health care  
25 company, correct?

N75DZILF

Sauber - Cross

1 A. Correct.

2 Q. You just testified that you don't recall speaking with the  
3 bank about the loan. Do you remember that? Do you remember  
4 testifying to that?

5 A. Yes, I do.

6 Q. Let me ask you a couple side questions.

7 Do you own or have you owned in the past a wine  
8 business?

9 A. Yes.

10 Q. Okay. And do you recall ever discussing that wine business  
11 with the banker at Park Avenue Bank?

12 A. No.

13 Q. And we established before that you own a property in  
14 Bridgeport, Connecticut, correct?

15 A. Correct -- I don't know if it's Bridgeport. I'm not sure.

16 Q. Well, it's Laurel, but it's technically Bridgeport?

17 A. All right.

18 Q. Do you know if it's technically Bridgeport?

19 A. I have no idea.

20 Q. Do you recall discussing that property with the banker at  
21 Park Avenue Bank?

22 A. I do not recall that.

23 Q. Do you recall ever telling the man at the bank why you  
24 needed to take out the loan?

25 A. No.

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Sauber - Cross

1 Q. So, in front of you I think you still have GX I think it's  
2 208.

3 Do you see the top, I think it's business description?

4 A. Yes.

5 Q. Do you know who gave that information to the bank?

6 A. No.

7 Q. Do you see the last sentence of the first paragraph that  
8 talks about Long Island Winery?

9 A. Yes.

10 Q. Is that the wine company that you owned?

11 A. Yes.

12 Q. Do you know how the bank got that information about the  
13 wine company?

14 A. I don't know for sure. I mean, I might have discussed it  
15 with Abraham Kahan, but I don't know specifically.

16 Q. And as far as you know, Kahan was the only one interacting  
17 with the bank on your behalf?

18 A. Yes, that was my understanding.

19 Q. So then in the last paragraph in that subsection where it  
20 says, "Mr. Sauber stated he needs funds to make additional  
21 investments," that sentence, as far as you know, you didn't  
22 make that statement to the bank, correct?

23 A. Correct.

24 Q. If anyone, it would be perhaps Fried that made -- sorry,  
25 Kahan that made it?

N75DZILF

Sauber - Cross

1 MS. COLSON: Objection.

2 THE COURT: Overruled. You can answer.

3 A. I have no idea. I wasn't there when it was discussed.

4 Q. But as far as you know, Kahan was the only person there who  
5 interacted with the bank on your behalf?

6 A. Yes.

7 Q. Do you recall ever telling anyone at the bank that you were  
8 taking out the loan and giving the money to Abraham Kahan?

9 A. No. When we were at the closing, they had me sign checks,  
10 and they gave it to him. It was handed over to him at the  
11 bank.

12 Q. But do you recall telling the bank itself that you were  
13 taking out the loan and giving it to him?

14 A. No.

15 Q. Let me direct your attention to August of 2013.

16 Do you recall giving a sworn statement before the FDIC  
17 about this loan?

18 A. Yeah. I don't remember the date, but I remember appearing  
19 there, yes.

20 Q. And do you recall that you swore under oath to tell the  
21 truth when you gave that statement?

22 A. Yes.

23 Q. Just like you did today in court?

24 A. Yes.

25 Q. And there was a court reporter taking down notes, just like

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Sauber - Cross

1 today?

2 A. I think so.

3 Q. And you had your attorney there at the time?

4 A. Yes, I did.

5 Q. And August 2013 was about four years from the loan,  
6 correct?

7 A. Yes.

8 Q. It was a lot closer than now, which is about 14 years from  
9 the loan, right?

10 A. I would assume so, yeah.

11 Q. Do you recall telling the FDIC in August of 2013 that you  
12 had made it very clear to the bank that you were taking out the  
13 loan, and you were giving the loan to Kahan?

14 A. I do not recall that, no.

15 Q. All right. Would seeing your FDIC testimony refresh your  
16 recollection?

17 A. I don't know. I could take a look at it.

18 MR. KAPLAN: Ms. Newman, if you can pull up 3507-008  
19 just for the Court, counsel, and the witness. And at page 32,  
20 please.

21 Q. Mr. Sauber, if you can just read to yourself the top  
22 answer, and let me know when you're done. Okay?

23 A. Okay. I mean, I don't have a recollection of this  
24 discussion with FDIC.

25 MS. MCLEOD: Objection, your Honor.

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Sauber - Cross

1           If you could take the document down before you inquire  
2 further.

3           MR. KAPLAN: Okay.

4           A. Yeah, I mean, I don't have an exact recollection of  
5 actually talking with them. It was many, many years ago. I  
6 think what I was referring to over there was at the closing,  
7 when they asked me to sign the checks and hand it over to them,  
8 but I'm not sure.

9           Q. That's fine.

10           On direct examination, you were asked some questions  
11 about your relationship with Mendel Zilberberg. Do you  
12 remember?

13          A. Yes.

14          Q. Now, you've never met Mendel Zilberberg, have you?

15          A. Not to my knowledge.

16          Q. And it's fair to say you've never met Mendel Zilberberg  
17 about this loan, correct?

18          A. Yes.

19          Q. Because, again, it was Kahan you dealt with?

20          A. Correct.

21          Q. And like you said earlier, it was Kahan who came to your  
22 house with the loan documents?

23          A. Yes.

24          Q. Now, you were asked some questions on direct about whether  
25 you were ever a client of Mendel Zilberberg.

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Sauber - Cross

1 Do you remember that?

2 A. Yes.

3 Q. Do you recall who represented you when you bought your  
4 house at 1477 East 27 Street in Brooklyn in 2000?

5 A. I can't tell you for sure, but it could have been Joseph  
6 Berger, who's a friend of mine.

7 Q. And were you aware whether Mr. Berger worked for  
8 Mr. Zilberberg at the time?

9 A. No, but I do know he had the closing in his office. I do  
10 remember that.

11 Q. But you don't recall that he actually worked at Mendel  
12 Zilberberg's office?

13 A. I have no clue who he worked for.

14 MR. KAPLAN: Ms. Newman, if you can pull up again  
15 3507-08?

16 MS. MCLEOD: Your Honor, to the extent this is  
17 attempting to refresh the recollection of the witness --

18 THE COURT: Well, I don't know what the question is.

19 MS. MCLEOD: As to --

20 THE COURT: Do you have an objection?

21 MS. MCLEOD: Can we be heard at sidebar?

22 THE COURT: Come up.

23 (Continued on next page)

24

25



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Sauber - Cross

1 (At sidebar; jury not present)

2 THE COURT: I'm sorry. I'm not sure what you're  
3 objecting to.

4 MS. MCLEOD: It wasn't an objection. I was trying to  
5 understand, before we got into it, what Mr. Kaplan's purpose  
6 was with the transcript.

7 THE COURT: Okay. To save you some time, do you  
8 understand it now?

9 MR. KAPLAN: Let's discuss the issue, because we're  
10 going to come back here in five seconds.

11 THE COURT: Is there something to fight about?

12 MS. MCLEOD: It might be worth talking about now.

13 MR. KAPLAN: He's testifying now he was never a client  
14 of Mendel Zilberberg. In front of the FDIC, he was asked a  
15 question, were you ever a client of Mendel Zilberberg. He  
16 said, yes. So I want to impeach him on that.

17 In addition, he said, I don't believe Joseph Berger  
18 worked for Mendel Zilberberg. At the FDIC, he said he worked  
19 at Mendel Zilberberg.

20 Another thing that's going to come up is we have a  
21 proposed exhibit. So this exhibit is the deed to his house.

22 THE COURT: Okay. Is it in evidence yet?

23 MR. KAPLAN: Well, it's part of the stipulation.

24 THE COURT: All right.

25 MR. KAPLAN: But I think we're going to probably

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Sauber - Cross

1 likely argue about it. So the relevance of this deed is, at  
2 the time, the intention is for Joseph Berger, who he said was  
3 his attorney -- Mendel Zilberberg & Associates.

4 THE COURT: Okay.

5 MR. KAPLAN: So I want to use this to establish to him  
6 that Joseph Berger was working for Mendel Zilberberg &  
7 Associates at the time.

8 THE COURT: Okay. Well, how does he verify this  
9 document from the information he's got, and --

10 MR. KAPLAN: So, I mean, the information is the deed  
11 to his house.

12 THE COURT: Oh, okay.

13 MR. KAPLAN: So to the extent that --

14 THE COURT: He can identify the deed.

15 MR. KAPLAN: It's a public document.

16 THE COURT: Is it in evidence?

17 MS. MCLEOD: It's not yet.

18 THE COURT: Do you intend to stipulate?

19 MR. KAPLAN: We stipulated as part of the stipulations  
20 through -- an authentic copy of the deed.

21 MS. MCLEOD: Authentic --

22 THE COURT: Are you going to object to its  
23 admissibility?

24 MS. MCLEOD: I am, your Honor.

25 And just to close out the three issues Mr. Kaplan was

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Sauber - Cross

1 raising, I think to the extent you want to impeach him, I think  
2 you can go ahead. I'll object if I think it's improper  
3 impeachment. But now that I understand what you're doing, it's  
4 helpful.

5 THE COURT: Okay.

6 MS. MCLEOD: As to this exhibit, the issue we have is  
7 this. So one is that this document does not say that  
8 Mr. Sauber is a client of Mr. Zilberberg. It just has a mail  
9 to address, and it says Brookwood Title, which is another one  
10 of Mr. Zilberberg's businesses. It's not clear from this who  
11 represents Mr. Sauber, or that Mr. Zilberberg represents him.

12 THE COURT: So what is it that you don't want him to  
13 ask this witness about this document?

14 MS. MCLEOD: So the asking is not a problem. It's the  
15 putting it into evidence, is I think misleading and confusing  
16 to the jury, because, frankly, as an attorney myself, I cannot  
17 tell from this document that Mr. Sauber is represented by  
18 Mr. Zilberberg. It just has a bunch of stamps on it with  
19 addresses of things to be mailed to. And so the idea that the  
20 jury should now infer from this that a representation occurred  
21 I think is misleading and confusing, and should be excluded on  
22 403 grounds.

23 THE COURT: Well, is this document -- are you going to  
24 object to this document being admitted into evidence, or did  
25 you guys stipulate to this document?

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Sauber - Cross

1 MS. MCLEOD: We did not stipulate it's admissibility,  
2 and I will object to it coming into the evidence.

3 THE COURT: Okay.

4 MR. KAPLAN: One thing in response to that, he's  
5 already testified Joseph Berger is his lawyer, so it's not a  
6 question of this having to prove that Joe Berger is his lawyer.

7 THE COURT: What are you trying to prove?

8 MS. ZAPATA: That Joe Berger at this point was  
9 associated with Mendel Zilberberg & Associates.

10 MS. MCLEOD: Your Honor, the issue is that --

11 THE COURT: How are you going to prove that through  
12 him?

13 MR. KAPLAN: No. I'm proving it through the deed  
14 itself. The deed is being sent to Mendel Zilberberg, attention  
15 Joseph Berger. And the next page, also, it's being sent to  
16 Mendel Zilberberg & Associates. So I'm not using it to  
17 establish he was the lawyer. He already established he was the  
18 lawyer.

19 THE COURT: I know, but what you're trying to  
20 establish is that this person represented him through  
21 Mr. Zilberberg, and that he was aware that Mr. Zilberberg was  
22 his lawyer. He said he wasn't wanted.

23 MR. KAPLAN: I don't need him to know the fact that  
24 Mr. Zilberberg was his lawyer.

25 THE COURT: What's the relevance of the fact

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Sauber - Cross

1 Mr. Zilberberg and this other lawyer have a relationship, other  
2 than the inference that he must have known that Zilberberg was  
3 involved?

4 MR. KAPLAN: Because one of the elements in this case,  
5 one of the charges in this case is Mr. Zilberberg lied to the  
6 bank when he said that he was a client of Mr. Zilberberg.

7 THE COURT: Right.

8 MR. KAPLAN: So this is helpful to establish that he  
9 actually was a client of the firm. Hold on. He was a client  
10 of the firm, because Joe Berger, who he already said was his  
11 lawyer, was working for Mendel Zilberberg at the time.

12 THE COURT: Well, I'm not sure -- first of all, I'm  
13 not even sure, do you have the original document?

14 MR. KAPLAN: This is -- I got this off the website,  
15 off ACRIS. This is -- it's got this seal.

16 THE COURT: But who's going to say that these three  
17 people are connected?

18 MR. KAPLAN: Well, so I'm going to -- he already said  
19 Joe Berger was connected to him, so we already have the  
20 connection to the witness, to this document. We already  
21 have -- his name is on the document, right? Herschel Sauber,  
22 it's his deed.

23 THE COURT: Right.

24 MR. KAPLAN: So he's a connected to the document. Joe  
25 Berger is connected to the document, because he already just

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Sauber - Cross

1 said Joe Berger represented him to buy his house.

2 THE COURT: Okay.

3 MR. KAPLAN: And I think he said recently there was a  
4 closing done at Zilberberg's office.

5 MS. MCLEOD: Yes, but --

6 THE COURT: So what do you want to ask him about this  
7 document?

8 MR. KAPLAN: What I want to ask him about the document  
9 is, were you represented by Joe Berger at Joe Berger &  
10 Associates -- at --

11 THE COURT: Okay.

12 MR. KAPLAN: You were represented by Joe Berger.  
13 Based on this document, it seems to say that it was mailed to  
14 --

15 THE COURT: I know, but that's not the question you're  
16 going to ask him, is it? What is the question?

17 MR. KAPLAN: I'm going to ask him, did you know at  
18 that time that Joe Berger worked for Mendel Zilberberg?

19 MS. MCLEOD: He already answered.

20 MR. BRAFMAN: With this document.

21 THE COURT: Whether he knows it is not the issue. The  
22 issue is whether it's true. He said already he didn't know  
23 that they had a relationship. He even said further than that,  
24 I think he said they didn't have a relationship. So the  
25 question is how are you establishing this relationship if he's

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Sauber - Cross

1 not aware of the relationship?

2 MR. KAPLAN: I'm establishing his relationship through  
3 his testimony at the FDIC, where he said he was a client.

4 THE COURT: That's different. If he says he was a  
5 client, you can confront him with that, but I'm not sure  
6 whoever filled out this document filled out this document  
7 accurately. That's what you're offering. You're offering it  
8 for the truth, that these two have a connection, and I'm not  
9 sure that there's anybody that I am aware of that can testify  
10 to that.

11 MR. KAPLAN: Judge, if I want to put in a business  
12 card, I wouldn't be offering the truth of the business card.

13 THE COURT: Well, it depends. It depends whether or  
14 not the business card came out of my pocket, and if you're  
15 trying to prove that there's a relationship between me and  
16 Mr. Brafman, because I had the business card in my pocket,  
17 because he gave it to me.

18 MR. KAPLAN: That's a fair point. Let's say the  
19 business card is attached to his deed --

20 THE COURT: But he's not giving you the answers that  
21 you want.

22 MR. BRAFMAN: You can use this to refresh his  
23 recollection.

24 MR. KAPLAN: Yes.

25 THE COURT: Without giving the jury the substance, for

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Sauber - Cross

1 the purpose -- you're offering it for the truth. You want the  
2 jury to imply they must have had a relationship, he must be  
3 lying about it, because this was written. We don't know who  
4 wrote this. We don't know what motivated the person to write  
5 this. We don't know what the relationship was, and even if  
6 there was a relationship, we don't know if he knows of the  
7 relationship, because he says, no, they didn't have a  
8 relationship.

9 So if you want to refresh his recollection, fine. You  
10 can do that. If you want to ask him, were you asked these  
11 questions or did you give these answers, you can ask him any of  
12 that.

13 MR. KAPLAN: I'm going to start with that, and see  
14 where it goes.

15 MS. MCLEOD: Okay.

16 MR. KAPLAN: Okay.

17 (Continued on next page)



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Sauber - Cross

1 (In open court; jury present)

2 THE COURT: Yes.

3 BY MR. KAPLAN:

4 Q. Mr. Sauber, you just said that you were never a client of  
5 Mendel Zilberberg, correct?

6 A. Not to my knowledge.

7 Q. Okay. So I want to refresh your recollection.

8 Let's go back to the FDIC testimony, page 26.

9 I think it's in front of you now.

10 As we established, this statement was given under  
11 oath, correct?

12 A. Yes.

13 Q. I'm sorry. Page 36.

14 Mr. Sauber, do you see the middle of the page? Were  
15 you asked the question, "were you ever a client of an attorney  
16 named Mendel Zilberberg?" And the answer, "yes?"

17 A. I do see that.

18 Q. And this is the testimony you gave in front of the FDIC?

19 A. Yes.

20 Q. And if we can go to page 37.

21 Do you recall being asked the question, "so that was a  
22 company you purchased, rather than funded and -- founded?" And  
23 giving the answer, "yes, that was a company I purchased?" But  
24 then, "my friend's name was Joe Berger. He was my attorney.  
25 He worked at that law office."

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Sauber - Cross

1 A. I don't recall it. I see it. I mean, I think if you want  
2 a little clarification, I'm not sure if I just assumed, because  
3 the closing was in his office, that I was a client, but I never  
4 knew that for a fact. I just know that we did the closing  
5 there.

6 Q. We can go to page 39. And, actually, if you can go to the  
7 bottom of page 38, please.

8 Do you recall being asked this question: "You just  
9 know you were at his office?" And giving the answer --

10 Next page, three -- "I know I was at his office. I  
11 think my friend Joe Berger, who was his -- worked -- I think he  
12 worked at -- he worked at that office for a short time."

13 A. You're asking me if I recall this question?

14 Q. I'm asking if you gave that answer.

15 A. I don't remember. I mean, I don't remember that. What  
16 year was that? 2013? I don't remember the interview.

17 Q. Moving on. At some point you said you went to the bank to  
18 fill out some documents for the loan, correct?

19 A. No, I didn't say that.

20 Q. Well, the document close -- the loan closing, didn't you go  
21 to the bank?

22 A. Yeah. Yeah.

23 Q. When you went to the bank for the loan closing, didn't you  
24 sign some documents?

25 A. I think so.

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Sauber - Cross

1 Q. And Abraham Kahan went with you, correct?

2 A. Right.

3 Q. And when you went to the bank that day, did you also open  
4 up an account?

5 A. I don't know. I assume so, because they gave me checks to  
6 sign, but I didn't come in there and ask to open up an account.

7 Q. And at that time, did Abraham Kahan ask you to sign some  
8 blank checks and give him those checks?

9 A. Yes.

10 Q. Do you know what Kahan did with those checks?

11 A. I have no idea.

12 Q. If we can pull up GX 315, which is part of the  
13 stipulations.

14 MR. KAPLAN: If there's no objection, we'd like to put  
15 in GX 315.

16 THE COURT: I believe it's already offered in  
17 evidence.

18 MS. MCLEOD: It was part of the stip, but I think both  
19 parties agree that Government Exhibit 315 should be admitted.

20 THE COURT: 315, not 215?

21 MR. KAPLAN: I'm sorry, 315. 315.

22 THE COURT: All right. Then I'll admit it as 315.

23 (Government Exhibit 315 received in evidence)

24 MR. KAPLAN: Thank you, your Honor.

25 Ms. Newman, if you can pull up page 20, and display it

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Sauber - Cross

1 to the jury and the witness. And if you could blow up the top  
2 two checks.

3 Q. So, Mr. Sauber, are those checks on your account?

4 A. It has my name on it, yes, I'm going to say.

5 Q. And is that your signature?

6 A. Yes.

7 Q. But the "pay to the order" section, you didn't fill that  
8 out, did you?

9 A. I did not.

10 Q. Isn't it true that Abraham Kahan owns Ads Here?

11 A. I don't know. I don't know. I know he told me he opened  
12 up an ads company, but I don't know for certain that he owns  
13 it.

14 Q. Again, are these checks with your signature that are made  
15 out to Toby Kahan, A. Kahan, and Toby Kahan?

16 A. Yes, they are.

17 Q. And, again, you didn't write out the names of the person  
18 getting the check?

19 A. No.

20 Q. Do you know if Abraham Kahan filled them out?

21 A. I do not.

22 Q. If we can go to page 6.

23 Okay. So this is a check from Aron Fried to "Hershel"  
24 Sauber, with your name spelled incorrectly?

25 A. Yes.

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Sauber - Cross

1 Q. You see on the second part it's endorsed. Did you endorse  
2 it?

3 A. No, I did not.

4 Q. Did someone else endorse your name on a check in your  
5 account?

6 A. I didn't do it. I mean, it's not my signature.

7 Q. Can we go to page 10, please.

8 Again, this is another check from Aron Fried to  
9 Herschel Sauber. This time the name is spelled right. But did  
10 you endorse the check?

11 A. No.

12 Q. If we can go to page 25.

13 Is this another check made out to Herschel Sauber?

14 A. Yes, it is.

15 Q. And do you see in the memo line it says "loan interest?"

16 A. Yes, I do.

17 Q. If you go to the endorsing, do you know if you did that?

18 A. It's a stamp. I have no idea. I don't even know what that  
19 is.

20 Q. So you don't recall ever endorsing this check?

21 A. No.

22 Q. Can we go to page 26?

23 This is another check made out to you?

24 A. Yes.

25 Q. Also says "loan interest?"

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Sauber - Cross

1 A. Yes.

2 Q. And has the same stamp for endorsing, right?

3 A. Yes, it does.

4 Q. But none of this is done by you? This is done by somebody  
5 else, correct?

6 A. I have no memory of it. No. There's nothing.

7 Q. Did you do anything with this account?

8 A. I don't know what account it is.

9 Q. Okay. If we can go to the first page. This is the Park  
10 Avenue Bank account in your name.

11 A. It says GPX Apex Company, LLC. I have no idea what that  
12 is.

13 Q. That's the check.

14 If we can go to the first page of the document?

15 A. What am I looking at, the account number?

16 Q. The account name, and the account number.

17 A. Yeah, I never had anything to do with that account.

18 Q. Did Kahan have to do with that account?

19 A. I assume so.

20 Q. So any checks written on that account were Kahan's checks,  
21 not your checks?

22 MS. MCLEOD: Objection.

23 THE COURT: Sustained as to the form.

24 MR. KAPLAN: That's fine. I'll move on.

25 Q. Do you remember on direct being asked some questions about

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Sauber - Cross

1 being approached by members of the bank asking about the loan?

2 A. Yes.

3 Q. And do you recall they came to your house in about August  
4 of 2010 to ask you some questions?

5 A. I remember they came. I don't remember the year or the  
6 date.

7 Q. And what do you recall telling them when they came to your  
8 house?

9 A. I don't. I was like really taken aback and flustered, and  
10 my reaction was to get them out of there. And whatever they  
11 said, I was like, sure, yes, I'll -- let me speak to my guys  
12 who are handling it, and try to get it taken care of right  
13 away.

14 Q. And did you reach out to Kahan after this?

15 A. Yeah, immediately.

16 Q. Do you recall telling those people from the bank at the  
17 time that you used the proceeds from the line of credit to  
18 establish a new home health care business?

19 A. I do not recall that. Again, if they asked me, I probably  
20 said yes. I think like a light bulb went on then that the bank  
21 doesn't know about this, when I was under the assumption that  
22 the bank did know about it, and I just wanted them out of there  
23 at that time.

24 Q. Do you recall telling them your new business should be  
25 profitable soon, in several months, and it was your intention

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Sauber - Cross

1 to pay back the loan at that time?

2 A. I do not recall that. That might have been something that  
3 Mr. Kahan had said to me. I'm not sure. I don't remember  
4 exactly.

5 Q. But this was you talking to the bankers, not Mr. Kahan,  
6 correct?

7 A. Again, I don't remember the exact conversation.

8 Q. Okay. I'm going to try to refresh your recollection.

9 If we can pull up DX-201 just for the witness, the  
10 Court, and the attorneys.

11 Just one second. It's not working on the computer, so  
12 if you'll just bear with me a minute. We have to use pictures.

13 THE COURT: Sure.

14 MR. KAPLAN: Judge, can I approach the witness?

15 THE COURT: Yes.

16 Q. Mr. Sauber, if you can read that document to yourself, and  
17 let me know when you're done.

18 Does that document refresh your recollection as to  
19 whether or not you told the bankers in August of 2010 that you  
20 used the proceeds of the loan to establish a new home health  
21 care business?

22 A. It does not refresh my memory. I mean, but, again, it is  
23 possible I told them, or it's possible they asked me and I said  
24 yes. I don't have a specific recollection of the conversation.

25 MR. KAPLAN: Okay. Ms. Newman, if you can pull up



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Sauber - Cross

1 document 3507-16, which is in evidence. You can display it if  
2 you want. And if you can just highlight the -- I shouldn't say  
3 highlight. Can you expand the first paragraph?

4 Q. So, Mr. Sauber, this is your non-prosecution agreement; is  
5 that right?

6 A. Yes.

7 Q. And do you see number two in that list of the crimes, which  
8 says "false representations that Sauber made directly to Valley  
9 National Bank representatives concerning the aforementioned  
10 loan and Sauber's involvement in the loan to the extent Sauber  
11 had disclosed such conduct to this office?"

12 A. Yes, I do.

13 Q. Do you know what false representations it's referring to?

14 A. Not specifically. I mean, it's what -- I'm not sure if I  
15 told it to the bank, or the bank suggested it to me and I just  
16 agreed with them. But it was -- I guess at that time I was  
17 trying not to look for any more trouble, and called Mr. Kahan  
18 right afterwards, and I did not open up to them and just tell  
19 them, hey, no, no; by the way, you guys really had a loan for  
20 Mr. Kahan; it had my name on it as a guarantor. I just wanted  
21 them out of there. I don't know if I directly told it to them,  
22 or they told it to me and I agreed with it.

23 MR. KAPLAN: Okay. Just a few more questions.

24 THE COURT: Sure.

25 MR. KAPLAN: If we can pull up GX 221 that is already

N75DZILF

Sauber - Cross

1 in evidence.

2 Q. And, Mr. Sauber, is this the deed going back to Toby Kahan?

3 A. Yes, it is.

4 Q. And you testified on direct that Mr. Kahan asked you to  
5 give you back this deed -- to give him back this deed, right?

6 A. Yes.

7 Q. And he asked you to give it back so he could pay you back  
8 or pay back the loan, correct?

9 A. Yes.

10 Q. Were you hopeful that he would pay back the loan after you  
11 gave back the deed?

12 A. Yeah, I believed him at that time.

13 Q. So it's fair to say you trusted him, and you gave him back  
14 the deed, because you believed he would pay you back?

15 A. I don't know if I trusted him, or I was hoping that he was  
16 telling me the truth, because I really wanted this off of my  
17 head. It was causing a lot of stress, and I just was looking  
18 to get this thing dealt with and done with. And when he  
19 promised me he was going to take care of it, I was like, okay,  
20 let's get this done.

21 Q. But he lied to you?

22 A. Yes.

23 Q. So you trusted him when you lent him \$70,000, correct?

24 A. Yes.

25 Q. You trusted him when you took out a \$1.4 million loan on

N75DZILF

Sauber - Redirect

1 his behalf?

2 A. Yes.

3 Q. You trusted him when you gave him back the deed to the  
4 property?

5 A. Yes, I did.

6 Q. And all these times he lied to you?

7 A. When he asked for the money, he didn't lie. He took it.

8 Q. Well, didn't he say he'd pay back the money?

9 A. Yeah.

10 Q. And after trusting him through all this, all you're left  
11 with is a million dollar judgment?

12 A. I'm not sure what the amount is, but I do have a judgment  
13 on my hands, yeah.

14 Q. I have no further questions.

15 THE COURT: Any further questions?

16 MS. MCLEOD: Very brief redirect.

17 THE COURT: Okay. Let's finish him up.

18 REDIRECT EXAMINATION

19 BY MS. MCLEOD:

20 Q. Mr. Sauber, you were asked some questions on  
21 cross-examination about Joe Berger and a closing at Mendel  
22 Zilberberg's office.

23 Do you remember that?

24 A. Yes, I do.

25 Q. What do you remember about the closing?

N75DZILF

Sauber - Redirect

1 A. I don't know if it was a refinance or we purchased our  
2 house. I mean, Joe Berger is a close friend. He still is.  
3 And I think he was just out of law school, and he said he could  
4 do the closing for us. And he told me, meet me at the office.  
5 And I do have a recollection of the building saying Mendel  
6 Zilberberg on the outside in large letters. That's why -- I  
7 mean, I don't know if I assumed that he worked for him. I have  
8 no idea.

9 Q. Was Mendel Zilberberg at the closing?

10 A. He was not.

11 Q. Have you ever met Mendel Zilberberg?

12 A. Not to my knowledge, no.

13 Q. Has he ever been your attorney?

14 A. Not that I know of.

15 MS. MCLEOD: No further questions, your Honor.

16 THE COURT: Any further questions of this witness?

17 MR. KAPLAN: No, your Honor.

18 THE COURT: Thank you, sir. You can step down.

19 Ladies and gentlemen, we're going to adjourn for the  
20 day. I think we're making good progress. If we keep making  
21 progress like this, I think we're ahead of schedule. But I'll  
22 let you know where we are at the end of tomorrow.

23 Don't discuss the case. Keep an open mind. I'll see  
24 you tomorrow morning. 9:45, so we can start promptly.

25 Let's give the jury a few minutes to leave the floor.

N75DZILF

Sauber - Redirect

(Continued on next page)

N75DZILF

Sauber - Redirect

1 (In open court; jury not present)

2 THE COURT: All right. Let's promptly start tomorrow  
3 morning at 9:30.

4 MS. MCLEOD: Thank you, your Honor.

5 MR. KAPLAN: Thank you, your Honor.

6 (Adjourned to July 6, 2023, at 9:30 a.m.)

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